

*BNSF Railway Company v
The Center For Asbestos Related Disease, Inc.*

*Senator Max Baucus
May 25, 2023*

*Charles Fisher Court Reporting
442 East Mendenhall
Bozeman, MT 59715
(406) 587-9016
maindesk@fishercourtreporting.com*

	Page 1	Page 3
1	IN THE UNITED STATES DISTRICT COURT	I N D E X
2	FOR THE DISTRICT OF MONTANA	2
3		3
4	BNSF RAILWAY COMPANY, on behalf of	4 EXAMINATION OF MAX BAUCUS BY:
5	THE UNITED STATES OF AMERICA,	PAGE:
6		5
7	Plaintiff,	6 Direct Examination by Mr. Tim Bechtold, Esq..... 6
8		7 Cross-Examination by Mr. J. Adam Duerk, Esq..... 31
9	vs. Cause No. CV-19-40-M-DLC	8 Redirect Examination by Mr. Tim Bechtold, Esq..... 95
10		9
11	THE CENTER FOR ASBESTOS RELATED	10
12	DISEASE, INC.,	11
13		12
14	Defendant.	13
15		14
16	VIDEO DEPOSITION UPON ORAL EXAMINATION OF	15
17	SENATOR MAX BAUCUS	16
18		17
19	BE IT REMEMBERED, that the videotaped deposition	18
20	upon oral examination of SENATOR MAX BAUCUS, appearing	19
21	at the instance of the Defendant, was taken at 224 East	20
22	Main, Bozeman, Montana, on May 25, 2023, beginning at	21
23	10:00 a.m., pursuant to Montana Rules of Civil Procedure,	22
24	before Robyn Ori English, Court Reporter - Notary Public.	23
25		24
		25
	Page 2	Page 4
1	APPEARANCES OF COUNSEL	E X H I B I T S
2		1
3	ATTORNEY APPEARING ON BEHALF OF THE	2
4	PLAINTIFF:	3 DEPOSITION EXHIBITS: PAGE:
5		4
6	W. ADAM DUERK	5 Exhibit 160 E-mail string from Tanis 86
7	Knight Nicastro Mackay, LLC	6 Hernandez to Cheryl A.
8	283 West Front Street, Suite 203	7 Williams - dated 5/4/2010
9	Missoula, MT 59802	8 Exhibit 161 Notification of the 88
10	duerk@knightnicastro.com	9 Affordable Care Act from Max
11		Baucus
12	ATTORNEY APPEARING ON BEHALF OF THE	10
13	DEFENDANT:	11
14		12
15	TIMOTHY BECHTOLD	13
16	Bechtold Law Firm, PLLC	14
17	P.O. Box 7051	15
18	Missoula, MT 59807	16
19	tim@bechtoldlaw.net	17
20		18
21		19
22		20
23		21
24		22
25		23
		24
		25

<p style="text-align: right;">Page 5</p> <p>1 VIDEO OPERATOR: This is the video-recorded subpoena 2 of Max Baucus, taken in the United States District Court 3 for the District of Montana, Civil Action No. 19-40-M-DLC, 4 BNSF versus CARD.</p> <p>5 Today is May 25th, 2023. The time is 10:09 a.m. 6 We are present with the witness at 224 East Main Street, 7 in Bozeman, Montana. The Court Reporter is Robyn Ori 8 English, and the video operator is Nate Trejo with Fisher 9 Court Reporting.</p> <p>10 The deposition is being taken pursuant to 11 Notice. I would now ask the attorneys to identify 12 themselves, who they represent, and whoever else is 13 present.</p> <p>14 MR. DUERK: Adam Duerk for Relator BNSF.</p> <p>15 MR. BECHTOLD: And I'm Tim Bechtold representing the 16 CARD clinic.</p> <p>17 VIDEO OPERATOR: The Court Reporter will now 18 administer the oath.</p> <p>19</p> <p>20 WHEREUPON, the following proceedings were had and 21 testimony taken, to wit.</p> <p>22</p> <p>23 </p> <p>24 MAX BAUCUS, 25 called as a witness herein, having been first duly sworn,</p>	<p style="text-align: right;">Page 7</p> <p>1 districts. It's now back to two terms; '74 and '78. 2 And I represented Montana in the U.S. 3 Senate from '78 -- excuse me, 1978 to about 2014. 4 And I represented the United States of 5 America in China as U.S. Ambassador to China in 2013 6 to '17. 7 And then since then, I've been 8 self-employed.</p> <p>9 Q. And, Max, during your time in Congress, 10 how many laws were you involved in drafting and 11 passing?</p> <p>12 A. It seems like an infinite number. Many. 13 No question, many.</p> <p>14 Q. Is it fair to say that you're familiar 15 with the drafting and passage of laws in Congress?</p> <p>16 A. With a good number of them, yes. Those 17 that are most important to me and to Montana, yes.</p> <p>18 Q. Could you please tell the jury about your 19 involvement with the drafting of the language of the 20 Libby provision of the Affordable Care Act?</p> <p>21 A. Yeah. Generally, I spent a lot of time 22 working on the Affordable Care Act. Let's see, a 23 couple years. Because at that time, the United 24 States really did not have much of a healthcare 25 system. It was very rewarding to help try to put</p>
<p style="text-align: right;">Page 6</p> <p>1 was examined and testified as follows:</p> <p>2</p> <p>3 DIRECT EXAMINATION</p> <p>4</p> <p>5 BY MR. BECHTOLD:</p> <p>6 Q. Could you spell your name -- say your 7 name and spell your last name for the Court 8 Reporter?</p> <p>9 A. Sure. Max Baucus, B-A-U-C-U-S.</p> <p>10 Q. And how would you prefer to be called 11 today? Mr. Baucus, Senator Baucus, Ambassador 12 Baucus, Max?</p> <p>13 A. Max.</p> <p>14 Q. All right. I'll call you Max.</p> <p>15 A. Okay.</p> <p>16 Q. Max, what is your current occupation?</p> <p>17 A. Well, I'm a -- self-employed. I 18 represent several companies. I consult with several 19 companies. I'm self-employed.</p> <p>20 Q. Okay. Could you outline your work 21 history for the jury?</p> <p>22 A. Well, I've been in public service most of 23 my life. I was in the State Legislature a couple 24 years in the early '70s. I represented Western 25 Montana. That's when we had two congressional</p>	<p style="text-align: right;">Page 8</p> <p>1 something together.</p> <p>2 Two main purposes, one of which was 3 accomplished, was to give greater coverage to 4 Americans. A lot of Americans didn't have any 5 health insurance, about 40 million at that time, as 6 I recall.</p> <p>7 The other was to -- goal was to help cut 8 costs because healthcare cost in the U.S. is just so 9 expensive.</p> <p>10 But, at the same time, I was very 11 involved specifically with the problems that people 12 in Libby were having with asbestos-related diseases. 13 I spent a lot of time in Libby, visited Libby many, 14 many times on that issue, my staff maybe over a 15 hundred times on that issue. It's what you do to 16 help Libby receive justice because of all the 17 asbestos-related illnesses and diseases in Libby.</p> <p>18 And so I thought I wanted to do something 19 to help Libby. Libby was not, in my judgment, 20 getting sufficient help in a lot of areas; one was 21 Superfund, a lot of asbestos out on the playgrounds. 22 It's just -- in the town of Libby. And the annex, 23 it was just -- to the mine, it was just stunning to 24 see these guys come off the mine just caked with 25 vermiculite. It was just awful.</p>

<p>1 And at the same time, I met a lot of 2 people in Libby who were dying because of 3 asbestos-related diseases. One in particular is a 4 fella named Les Skramstad, and I spent some time 5 with Les. And Gayla Benefield, I think, is another 6 lady there who is very, very adamant and active in 7 making sure that people of Libby got justice.</p> <p>8 And I remember sitting in Gayla's living 9 room talking to a group there, and Les Skramstad -- 10 he explained the problems. And I said to Les, "Les, 11 I will do whatever it takes to bring justice to the 12 people of Libby, Montana."</p> <p>13 And he looked me straight in the eye and 14 pointed his finger at me and said, "Well, Senator, 15 many people have said they're going to help Libby, 16 so I'll be watching."</p> <p>17 And I thought to myself immediately, he 18 didn't have to watch because I'm going to do 19 whatever it took to bring justice to the people of 20 Libby.</p> <p>21 And so a major action was to include in 22 the Affordable Care Act a provision which would give 23 Medicare coverage to the people who were diagnosed 24 with asbestos-related disease if Libby was declared 25 a national healthcare emergency. So I put that</p>	<p>Page 9</p> <p>1 the Congressional Record where I'm speaking about 2 this provision that is helping the people of Libby. 3 If you want, I can read parts, but that's 4 what this is.</p> <p>5 Q. Okay. And why did you make that 6 statement in the Congressional Record?</p> <p>7 A. Because I wanted the law to pass and I 8 wanted members of Congress, in this case U.S. 9 Senate, to understand the reasons to putting this 10 provision in the bill. It outlines what -- this 11 portion here outlines the basic provisions of the 12 bill that are relevant to Libby.</p> <p>13 Q. And, Max, I'd like you now to go to Tab 7 14 in the exhibits, Exhibit 305.</p> <p>15 A. All right.</p> <p>16 Q. I'd like you to turn to the fifth page of 17 that exhibit. Could you tell the jury what that 18 exhibit is?</p> <p>19 A. Well, this is basically an outline of the 20 Affordable Care Act. It lists various -- well, 21 there are various -- outlines various provisions, 22 sections of the bill and -- clearly not -- the whole 23 bill is not here, because, oh, god, it's over 800 24 pages.</p> <p>25 Q. Right. So what I'd like you to look at</p>
<p>Page 10</p> <p>1 provision in the bill to make sure that Libby people 2 that have asbestos get coverage, so long as the 3 designation is made, an actual healthcare emergency 4 designation.</p> <p>5 And, frankly, I tried two or three times 6 to get different administrations to invoke that 7 declaration. And, finally, we were able in the 8 Obama administration to get that designation through 9 then Secretary Sebelius, who was secretary of HHS.</p> <p>10 And so, you know, I got familiar with 11 that part of the Affordable Care Act, and, frankly, 12 many parts of the Affordable Care Act, because I 13 spent about two or three years on that act to 14 finally get it passed.</p> <p>15 Q. Max, I'd like to draw your attention to 16 Tab 3 of Exhibit 112, and then to page 9 of that 17 exhibit. So if you look at the bottom right-hand 18 corner, there's numbers.</p> <p>19 A. Okay. Yeah.</p> <p>20 Q. I guess it starts at -- let's start at 21 page -- it actually starts at page 6.</p> <p>22 A. Okay, yeah.</p> <p>23 Q. Could you tell the jury what we're 24 looking at?</p> <p>25 A. Yeah, this -- it looks like a portion of</p>	<p>Page 12</p> <p>1 is Section 1881A.</p> <p>2 A. 1881A.</p> <p>3 Q. And then if you go to Section 81A, 4 sub (e).</p> <p>5 A. Yeah, I see that.</p> <p>6 Q. Okay. And could you tell the jury 7 what -- who a environmental exposure affected 8 individual is defined as?</p> <p>9 A. Well, the statute says, "In general," a 10 person's covered "who is diagnosed with one or more 11 conditions described in subparagraph (B)." 12 Subparagraph (B) is "Conditions Described" -- and 13 here I'm reading from the statute. "For purposes of 14 subparagraph (A), the following conditions are 15 described in this subparagraph." One, "asbestosis, 16 pleural thickening, or pleural plaques as 17 established by the interpretation of a B reader, 18 qualified physician of a plain chest x-ray or 19 interpretation of a computed tomographic 20 radiograph," I guess that's a CT, "of the chest by a 21 qualified physician as determined by the secretary" 22 and other -- "or such other diagnostic standards as 23 the secretary specifies."</p> <p>24 Q. Okay. So to summarize, a person 25 qualifies if they have a diagnosis of one of those</p>

<p style="text-align: right;">Page 13</p> <p>1 conditions described in -- is diagnosed with one or 2 more conditions described in that subparagraph B 3 which you just read.</p> <p>4 A. Yeah, that's what the statute says, and 5 that's what we -- and the statute is written that 6 way because we wanted people in Libby to be covered.</p> <p>7 Q. Now, Max, I'd like you to now draw your 8 attention to the first tab, Exhibit 108.</p> <p>9 A. Yeah, here it is.</p> <p>10 Q. And what is this exhibit?</p> <p>11 A. This is a declaration by me, Max Baucus.</p> <p>12 Q. And when did you provide that 13 declaration?</p> <p>14 A. Well, it's dated February 2002 -- 2022, a 15 while ago, earlier -- or last year.</p> <p>16 Q. And I understand that this declaration 17 was prepared by your staff working with other 18 people --</p> <p>19 A. Yeah, right. Yeah, this is my 20 declaration.</p> <p>21 Q. And why did you give this declaration?</p> <p>22 A. First of all, because it's part of this 23 procedure, and second, I wanted to declare why I put 24 these provisions in the Affordable Care Act and what 25 they basically provide.</p>	<p>1 that physicians at the Center for Asbestos Related 2 Disease are qualified under the language of the Act 3 to diagnose asbestos" -- I don't know that word -- 4 "asbestosis, pleural thickening, or pleural plaques 5 by interpretation of a computed tomographic 6 radiograph of the chest."</p> <p>7 Q. Is that still your testimony?</p> <p>8 A. Yep.</p> <p>9 Q. And paragraph 7.</p> <p>10 A. 7 reads, "Thus physicians at CARD are 11 qualified under the Act to diagnose asbestosis, 12 pleural thickening, pleural plaques by 13 interpretation of a computed tomographic radiograph 14 of the chest."</p> <p>15 Q. And that's still your testimony?</p> <p>16 A. It is.</p> <p>17 Q. And paragraph 8?</p> <p>18 A. 8. "Moreover, individuals diagnosed by 19 CARD physicians to have asbestosis, pleural 20 thickening, or pleural plaques are eligible for 21 Medicare benefits under the amendments to the Social 22 Security Act enacted by the Affordable Care Act."</p> <p>23 Q. Is that still your testimony?</p> <p>24 A. It is.</p> <p>25 Q. And that was the intention of passing the</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. Okay.</p> <p>2 A. The purpose was to make sure the people 3 in Libby, Montana with asbestos-related disease are 4 covered under Medicare, so long as if the 5 declaration is approved by the secretary, and that 6 is the case here.</p> <p>7 Q. So if we look at paragraph No. 4 of your 8 declaration, what does that read?</p> <p>9 A. "I worked closely with Kathleen Sebelius, 10 then Secretary of the Department of Health and Human 11 Services, and her staff, to draft language in the 12 Affordable Care Act to ensure that physicians at the 13 Center for Asbestos Related Disease," that is CARD, 14 "in Libby, Montana, would be qualified under the 15 language of the Act to diagnose asbestosis, pleural 16 thickening, and pleural plaques."</p> <p>17 Q. And so did the language that you just 18 read in the -- under Section 1881A provide that 19 language?</p> <p>20 A. Yes, it does. Yes, I think so.</p> <p>21 Q. And then in paragraph 6, you state?</p> <p>22 A. Do you want me to read that?</p> <p>23 Q. Yes.</p> <p>24 A. Okay. "After passage of the Affordable 25 Care Act, Secretary Sebelius' department determined</p>	<p>1 Act?</p> <p>2 A. Absolutely.</p> <p>3 Q. And paragraph 9?</p> <p>4 A. Ooh, it's longer. Okay. "It was my 5 express intention and the express intention of 6 Secretary Sebelius to have the language of the 7 Affordable Care Act enable physicians at CARD be 8 determined qualified to diagnose asbestosis, pleural 9 thickening, and pleural plaques by interpretation of 10 a computed tomographic radiograph of the chest. It 11 was also my express intention and the express 12 intention of Secretary Sebelius that individuals 13 diagnosed by CARD physicians to have asbestosis, 14 pleural thickening, or pleural plaques would be 15 eligible for Medicare benefits under the amendments 16 to the Social Security Act enacted by the Affordable 17 Care Act."</p> <p>18 Q. And that's still your testimony?</p> <p>19 A. It is.</p> <p>20 Q. Doctor -- I mean, Senator, I'd like you 21 to take a look at Tab 6, Exhibit 301.</p> <p>22 A. All right. Okay.</p> <p>23 Q. And do you recognize what that is?</p> <p>24 A. This is -- it says, "Overview 25 Information, Department of HHS," and it's -- I guess</p>

<p style="text-align: right;">Page 17</p> <p>1 it's -- it relates to agency funding. 2 MR. DUERK: I'd object on foundation grounds. 3 Go ahead. 4 Q. (By Mr. Bechtold) Have you seen this document before, Max? 5 A. I don't think so. Nope, I haven't seen 6 this. 7 Q. All right. Then I will carry on. 8 A. Okay. 9 Q. Let's look -- go back to your declaration, and now to paragraph 10. 10 A. 10. "After passage of the Affordable 11 Care Act, B Reader qualified physicians may 12 diagnosis asbestosis, pleural thickening, and 13 pleural plaques based on review of plain chest 14 x-rays of individuals and individuals so diagnosed 15 by B Reader physicians are eligible for Medicare 16 benefits under the amendments to the Social Security 17 Act enacted by Affordable Care Act."</p> <p>18 Q. Is that still your testimony? 19 A. It is, yep. 20 Q. And so your testimony is that B Readers 21 can diagnose individuals and make them eligible for 22 Medicare benefits? 23 A. Yeah, B Readers finds a positive reading,</p>	<p style="text-align: right;">Page 19</p> <p>1 A. That's correct. 2 Q. So why does the Affordable Care Act state 3 that a qualifying diagnosis is established by 4 interpretation by a B Reader qualified physician of 5 a plain chest x-ray or interpretation of a computed 6 tomographic radiograph of the chest by a qualified 7 physician as determined by the Secretary when 8 B Readers don't make clinical diagnoses? 9 MR. DUERK: Objection, foundation, no prior 10 disclosure for an expert opinion. 11 Go ahead. 12 THE WITNESS: Well, the intent here is to make sure 13 that any person in Libby related to Libby asbestos who has 14 asbestos-related disease is covered. That's the purpose. 15 And as I was helping people in Libby when doing all this, 16 it became apparent to me that it's difficult to read a lot 17 of these chest x-rays because the disease is so varied, 18 and different individuals have different variations of the 19 disease. So I want to make sure that is -- everybody is 20 covered. One doctor may miss a person who should be 21 covered, and another doctor will find it. I want to be as 22 inclusive as possible. 23 So the point of all this is to assure that even 24 the B Readers do not make, quote, diagnoses, but if a 25 B Reader finds a positive reading with the CT scan or</p>
<p style="text-align: right;">Page 18</p> <p>1 yeah, it qualifies. 2 Q. Okay. And how about paragraph 11? 3 A. "It is my express intention and the 4 express intention of Secretary to have the language 5 of the Affordable Care Act ensure that if a B Reader 6 qualified physicians diagnosed asbestosis, pleural 7 thickening, and pleural plaques based on review of 8 plain chest x-rays of individuals, these individuals 9 would be eligible for Medicare benefits under the 10 amendments to the Social Security Act enacted by the 11 Affordable Care Act." [As read] 12 Q. And is that still your testimony? 13 A. Yep, yes. 14 Q. Now, Max, I would like to draw your 15 attention to Tab 10. 16 A. Okay. 17 Q. You're not a medical doctor, are you? 18 A. I am not. 19 Q. But B Readers are doctors, are they not? 20 A. That's correct. They are. 21 Q. But you're aware that B Readers do not 22 make clinical diagnoses, correct? 23 A. Yes. 24 Q. And B Readers just interpret x-rays, 25 correct?</p>	<p style="text-align: right;">Page 20</p> <p>1 x-ray, that that's sufficient to allow the patient to be 2 qualified. 3 So the main point being here that there's 4 various ways that a positive determination can be made. 5 One's a diagnosis at CARD, and another is a positive 6 reading by a B Reader. Even though the B Reader does not 7 technically diagnose, if the B Reader finds a positive 8 result, then that's sufficient to qualify for Medicare 9 coverage. 10 MR. DUERK: Same objections, move to strike. 11 Go ahead. 12 Q. (By Mr. Bechtold) And so in your 13 declaration when you testify that -- that -- in 14 paragraph 10 that B Reader qualified physicians may 15 diagnosis asbestosis, pleural thickening, and 16 pleural plaques, that's with the recognition that 17 these are not clinical diagnoses? 18 MR. DUERK: Same objections, foundation, no prior 19 disclosure, relevance, move to strike. 20 Go ahead. 21 THE WITNESS: Yes. Absolutely. No question. 22 Q. (By Mr. Bechtold) So why did Congress 23 include that in the Affordable Care Act? 24 A. Because I -- because I put it in. Pretty 25 simple. And I put it in for good reason. People in</p>

<p style="text-align: right;">Page 21</p> <p>1 Libby needed justice, and the members of Congress 2 agreed with me. So the Act was passed.</p> <p>Q. And now I'd like to draw your attention to Exhibit 112 again.</p> <p>5 A. Where's that?</p> <p>6 Q. Which is --</p> <p>7 A. Which tab?</p> <p>8 Q. It is Tab 3, sorry. And then go to 9 page 9. And, again, this is your testimony from the 10 Congressional Record?</p> <p>11 A. Right, that's right.</p> <p>Q. And could you take a look at the 13 paragraph that starts with "Medical Care in Libby" 14 about five paragraphs from the bottom?</p> <p>15 A. Page 9?</p> <p>Q. Yeah.</p> <p>17 A. Okay. "Medical care in Libby has 18 historically been limited due to Libby's isolated 19 location and economic situation, thus reducing the 20 chance of early detection and treatment of 21 asbestos-related disease."</p> <p>22 Boy, that's true. That's my editorial on 23 it.</p> <p>24 "This piece bears repeating. 25 "Let me refine that point. For a long</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Correct.</p> <p>2 Q. -- was this the sentiment you were --</p> <p>3 A. Yes, that's the sentiment. That's 4 basically the point. That's correct.</p> <p>5 Q. So why did you include the provision 6 about allowing B Readers and outside readers to have 7 interpretations qualify as diagnoses?</p> <p>8 MR. DUERK: Objection, foundation, relevance, no 9 prior disclosure.</p> <p>10 THE WITNESS: Because we wanted to make sure that 11 everybody who had the disease was covered. That meant the 12 statute to be read in an inclusive way. And inclusion 13 would mean not only a diagnosis determined by the CARD 14 clinic, but also if a B Reader were to find a positive 15 indication of asbestos-related disease, that that would be 16 enough to allow that person to be covered under Medicare.</p> <p>17 So I wanted to make sure that if a case was 18 missed at CARD, by the CARD clinic, that it would be 19 picked up by someone else, by another doctor. We're 20 talking about doctors here, radiologists who would look at 21 CT scans and -- of the patient. And if that doctor finds 22 a positive indication of asbestos-related disease, that 23 that would be sufficient. I wanted to make sure that the 24 statute was sufficiently inclusive and people would not be 25 missed because of a missed diagnosis.</p>
<p style="text-align: right;">Page 22</p> <p>1 time, we've been talking to lung specialists across 2 the country about the Libby tremolite asbestos, and 3 we got just so-so responses about how dangerous it 4 is. Why? Because virtually none of these doctors 5 experienced dealing with the pernicious kind of 6 asbestos we have in Libby. It took a long time to 7 get their attention. We finally got some doctors to 8 say this stuff in Libby is wicked stuff. That's 9 why, frankly, EPA has started to understand how bad 10 this really is.</p> <p>11 "Essentially, the lack of access to 12 health care services in Libby, I will say it again, 13 has actually worsened the effects of this 14 contamination. It is worked to their disadvantage.</p> <p>15 "The language before us today helps to 16 solve this. It allows us to fulfill the commitment 17 we made to the people of Libby when we passed the 18 Affordable Care Act 30 years ago. Heaven forbid, if 19 in the future another Superfund site like Libby 20 emerges, the bill before us today will allow the 21 Secretary to use the authorities in this provision 22 to fulfill our commitment to provide health care 23 services for those residents as well."</p> <p>24 Q. So, Max, when you stated earlier that 25 doctors didn't seem to recognize the --</p>	<p style="text-align: right;">Page 24</p> <p>Q. (By Mr. Bechtold) So for purposes of the 2 statute, does the word "diagnosis" include 3 interpretations by B Readers?</p> <p>4 MR. DUERK: Objection, foundation, no prior 5 disclosure, relevance.</p> <p>6 THE WITNESS: Yes, absolutely. That's the whole 7 point of this.</p> <p>8 Q. (By Mr. Bechtold) And it sounds like 9 from your testimony before Congress that you were 10 aware that other doctors didn't always agree with 11 CARD doctors?</p> <p>12 A. No question, no question. Well, for a 13 lot of reasons. I mean, there's -- there's 14 different kinds of asbestos that is more pernicious 15 than asbestos found in other parts of the country. 16 We wanted to educate doctors that this is really 17 bad. It's bad asbestos that has to be picked up 18 early.</p> <p>19 Q. Max, I'm going to direct your attention 20 to Tab 5, which is Exhibit 76, and I'd like you to 21 go to page 4 of that.</p> <p>22 A. Okay.</p> <p>23 Q. Do you recognize what this document is?</p> <p>24 A. Yeah, I think that's a submission for 25 coverage.</p>

<p style="text-align: right;">Page 25</p> <p>1 MR. DUERK: Objection, no prior disclosure, 2 foundation.</p> <p>3 Q. (By Mr. Bechtold) You didn't create this 4 form, did you?</p> <p>5 A. Oh, no.</p> <p>6 Q. Do you know who did?</p> <p>7 A. I think HHS did, or maybe an agency of 8 HHS.</p> <p>9 Q. But that's not something that was created 10 by statute, was it?</p> <p>11 A. That's correct. That's a -- this is 12 after the statute was passed. HHS, pursuant to its 13 authority, designed -- or set up this procedure and 14 created this checklist.</p> <p>15 Q. Okay. But if there's some confusion 16 between this checklist and the statute, which should 17 govern?</p> <p>18 MR. DUERK: Objection, foundation, no prior 19 disclosure.</p> <p>20 THE WITNESS: The statute, clearly the statute.</p> <p>21 Q. (By Mr. Bechtold) And that was the 22 purpose of passing the statute, correct?</p> <p>23 A. What was?</p> <p>24 Q. The purpose of the -- the purpose, again, 25 of passing the statute was to afford as much</p>	<p style="text-align: right;">Page 27</p> <p>1 A. Well, this says it's an undisputed fact. 2 The answer is I'm not personally aware, but it's 3 certainly possible.</p> <p>4 Q. And you're aware that CARD has been 5 diagnosing individuals with asbestos-related 6 diseases even as qualified physicians under the Act, 7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And you're aware that B Readers have been 10 identifying people with asbestos-related disease 11 even though CARD doesn't find those same 12 individuals -- doesn't diagnose those same 13 individuals with an asbestos-related disease, 14 correct?</p> <p>15 MR. DUERK: Objection, form, leading, nondisclosure. 16 Go ahead.</p> <p>17 THE WITNESS: Yes.</p> <p>18 Q. (By Mr. Bechtold) And your testimony 19 from your declaration is that either CARD 20 physicians' or B Readers' diagnoses may qualify for 21 Medicare, correct?</p> <p>22 A. Yes.</p> <p>23 Q. So have you been aware that CARD has been 24 submitting these individuals for environmental 25 health hazard checklist benefits through Medicare</p>
<p style="text-align: right;">Page 26</p> <p>1 possible care as possible.</p> <p>2 A. Oh, you asked about the purpose? Yeah, 3 exactly. I mean, people in Libby --</p> <p>4 MR. DUERK: Objection, nonresponsive.</p> <p>5 Q. (By Mr. Bechtold) Go ahead.</p> <p>6 A. People -- I mean, it's a far corner part 7 of Montana. They just need help. They're just -- 8 and I wanted to do all I could do to help. And I 9 wanted the statute to be broad, wanted the coverage 10 to be broad.</p> <p>11 Q. Okay. Max, I'm going to draw your 12 attention now to Tab 4, which is Exhibit 137.</p> <p>13 A. Okay.</p> <p>14 Q. And I'd like to start at the last page, 15 page 3. And this is a document you've seen before, 16 correct?</p> <p>17 A. Yes.</p> <p>18 MR. DUERK: Objection, nondisclosure. 19 Go ahead.</p> <p>20 Q. (By Mr. Bechtold) Now, were you aware -- 21 if we look at Docket No. 97, SDF 292 at the very 22 bottom, were you aware that CARD has been signing 23 these environmental health hazard forms for patients 24 without a clinical diagnosis since they've been 25 getting money through the ATSDR grant?</p>	<p style="text-align: right;">Page 28</p> <p>1 when B Readers alone find an asbestos-related 2 disease?</p> <p>3 MR. DUERK: Objection.</p> <p>4 THE WITNESS: No. I just don't know.</p> <p>5 Q. (By Mr. Bechtold) Max, I'm going to draw 6 your attention now to your -- to Tab 8, Exhibit 348.</p> <p>7 MR. DUERK: Has this been admitted into evidence?</p> <p>8 MR. BECHTOLD: Well, actually, theoretically 9 nothing's been admitted yet.</p> <p>10 Q. (By Mr. Bechtold) I'm going to draw your 11 attention to Exhibit 348. Do you know what this is?</p> <p>12 A. This is my deposition at an earlier date.</p> <p>13 Q. Do you recall giving a declaration -- I 14 mean, giving a deposition in July of 2022?</p> <p>15 A. I do.</p> <p>16 Q. Do you recall being asked some questions 17 about your declaration in July of 2022?</p> <p>18 A. I do.</p> <p>19 Q. Can I draw your attention to page 9 and 20 10 of the deposition. So on page 9 --</p> <p>21 A. Page 9. I see it. Yeah, page 9.</p> <p>22 Q. So let's start on line 21. Just review 23 that to yourself, please.</p> <p>24 A. Okay. Okay.</p> <p>25 Q. Does that refresh your memory a little</p>

Page 29	Page 31
<p>1 bit about the declaration?</p> <p>2 A. Yeah.</p> <p>3 Q. So is it still your testimony that this</p> <p>4 declaration was drafted with the help of your staff?</p> <p>5 A. It is.</p> <p>6 Q. And that you signed it because you</p> <p>7 believed it to be true?</p> <p>8 A. Yes. And it is true.</p> <p>9 Q. Okay. I'd like to now move on to</p> <p>10 page 20.</p> <p>11 A. All right. All right, 20.</p> <p>12 Q. And I'll draw your attention to line 13.</p> <p>13 Just read through that to yourself and refresh your</p> <p>14 memory.</p> <p>15 A. All right.</p> <p>16 Q. And then onto page 21.</p> <p>17 A. Yeah. Yeah.</p> <p>18 Q. Okay. So is your testimony still that</p> <p>19 the idea behind the Affordable Care Act was to</p> <p>20 provide Medicare benefits for people who were</p> <p>21 exposed to Libby asbestos, correct?</p> <p>22 A. Yeah, right. Yes.</p> <p>23 Q. And for -- to provide Medicare coverage</p> <p>24 for those who were diagnosed with asbestos-related</p> <p>25 diseases, correct?</p>	<p>1 VIDEO OPERATOR: We are back on the record. The time</p> <p>2 is 10:56 a.m.</p> <p>3</p> <p>4 CROSS-EXAMINATION</p> <p>5</p> <p>6 BY MR. DUERK:</p> <p>7 Q. Senator Baucus, I'm Adam Duerk. We've</p> <p>8 taken your deposition once before today; is that</p> <p>9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. That was July of 2022, last year?</p> <p>12 A. Sounds about right.</p> <p>13 Q. Sir, to begin with, I'd just like to</p> <p>14 review with you what you did in anticipation of your</p> <p>15 deposition today. Who, if anyone, did you speak to</p> <p>16 about your deposition prior to today?</p> <p>17 A. I spoke to Mr. Bechtold.</p> <p>18 Q. Okay. And when did that conversation</p> <p>19 occur?</p> <p>20 A. Yesterday.</p> <p>21 Q. How long was that conversation?</p> <p>22 A. Fifteen minutes, 20 minutes.</p> <p>23 Q. Did you speak with anyone else before</p> <p>24 today's deposition?</p> <p>25 A. No.</p>
Page 30	Page 32
<p>1 A. Yes.</p> <p>2 Q. And based upon your understanding of your</p> <p>3 drafting of the Affordable Care Act, how does one</p> <p>4 individual get diagnosed with an asbestos-related</p> <p>5 disease?</p> <p>6 A. Either by going to the CARD clinic and</p> <p>7 getting diagnosed as having the disease or when a B</p> <p>8 Reader finds a positive indication. Either case,</p> <p>9 that qualifies.</p> <p>10 MR. BECHTOLD: Well, Max, thank you for your time. I</p> <p>11 have no more questions right now.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MR. BECHTOLD: Mr. Duerk may have some</p> <p>14 cross-examination questions --</p> <p>15 THE WITNESS: Sure.</p> <p>16 MR. BECHTOLD: -- at which time I can follow-up</p> <p>17 afterward.</p> <p>18 THE WITNESS: Sure. All right.</p> <p>19 MR. DUERK: Let's go ahead and take a short break.</p> <p>20 THE WITNESS: Sure.</p> <p>21 VIDEO OPERATOR: We're going off the record. The</p> <p>22 time is 10:46 a.m.</p> <p>23</p> <p>24 (Whereupon, a recess was taken)</p> <p>25</p>	<p>1 Q. Okay. So one conversation with Tim</p> <p>2 Bechtold.</p> <p>3 A. Uh-huh.</p> <p>4 Q. We've reviewed some material together</p> <p>5 during your deposition.</p> <p>6 A. Correct.</p> <p>7 Q. In that 15-minute conversation, did you</p> <p>8 review those materials with Mr. Bechtold?</p> <p>9 A. Yes.</p> <p>10 Q. Between the time of your deposition last</p> <p>11 July and this morning, have you spoken with anyone</p> <p>12 else about your deposition?</p> <p>13 A. No.</p> <p>14 Q. And, sir, the reason that I ask is, at</p> <p>15 your last deposition, we spoke about the declaration</p> <p>16 that you signed; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. That deposition lasted several hours. Do</p> <p>19 you recall that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Okay.</p> <p>22 A. It was a long time.</p> <p>23 Q. It was a long time.</p> <p>24 And during that deposition, I asked you</p> <p>25 about any of the materials that you reviewed in</p>

<p style="text-align: right;">Page 33</p> <p>1 anticipation of that July 20, 2022 deposition. And 2 do you recall, at the last deposition, you told me 3 that you didn't recall speaking with anyone prior to 4 that deposition about the basis of your testimony? 5 A. Yes. 6 Q. Okay. I also asked in July of 2022, 7 whether you recalled reviewing any written records. 8 And during the last deposition, you indicated that 9 you had not reviewed anything in writing. Do you 10 recall that? 11 A. Yeah, I do. Yes, I think that's right. 12 Q. During that last deposition, likewise, 13 you testified that you had had a 15-minute 14 conversation with Dr. Black before the deposition, 15 but other than that 15-minute conversation, you 16 didn't recall any other conversations. 17 A. That's correct. 18 Q. Okay. You didn't remember any written 19 information being sent to you other than a draft of 20 the declaration before your last deposition, 21 correct? 22 A. Correct. 23 Q. Okay. So CARD sent you no written 24 materials prior to that last deposition, right? 25 A. Correct.</p>	<p style="text-align: right;">Page 35</p> <p>1 were not aware that you had been declared an expert 2 witness in this case, correct? 3 A. All I know is Dr. Black asked me if I 4 wanted to testify, and I said yes. 5 Q. But during the last deposition when I 6 asked you, it appeared you weren't aware that you'd 7 been declared an expert in this case. 8 A. I think that's right. 9 Q. Okay. Sir, when we visited together in 10 July, you agreed with me that expert witnesses must 11 be armed with facts. Does that sound right? 12 A. Anybody who speaks should be armed with 13 facts. 14 Q. Right. And if someone is offered as an 15 expert witness in a federal trial, it would be 16 especially important for them to be -- 17 A. I don't know. That's a legal 18 determination. I'm not qualified to answer that. 19 Q. Okay. Sir, if you would look at Tab 20, 20 please. I'm looking at page 36. 21 A. Okay. 22 Q. I'll start -- 23 A. This is -- this is the deposition? 24 Q. Yes. And, sir, this is your deposition 25 from July 19th, 2022. I was there, you were there,</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. And so I didn't have an opportunity to 2 ask you any questions about any written materials 3 because you said you hadn't seen any. Does that 4 sound accurate? 5 A. Yeah, except clearly at some point I saw 6 the declaration, so I knew what was in the 7 declaration because I signed it. 8 Q. Sure. But aside from that declaration, 9 last time we were together, you had seen no written 10 pleadings, no copies of the complaint, no 11 depositions, no EHH forms, no written documents of 12 any kind, correct? 13 A. Correct. 14 Q. At the last deposition, you essentially 15 testified that your testimony was based on your 16 memory alone; is that right? 17 A. Yes. 18 Q. In terms of any file in this case, you 19 don't have a file related to this current lawsuit 20 related to the opinions that you have been offered? 21 A. That's correct. 22 Q. Okay. You haven't talked to any 23 witnesses in this case, right? 24 A. Correct. 25 Q. Last time before you were deposed, you</p>	<p style="text-align: right;">Page 36</p> <p>1 Mr. Bechtold was there, and a Court Reporter was 2 there, correct? 3 A. Hold on a second. This thing is falling 4 apart. 5 Okay, say again. 6 Q. Sure. I'm -- I was there, you were 7 there -- 8 A. What page are you on? 9 Q. We're at page 36, line 10. We were 10 talking about the requirement for understanding 11 facts of the case. So I'll read this part of your 12 deposition and please tell me if I've read -- 13 A. Page 36? 14 Q. Page 36. I'm starting at line 10, and 15 I'll continue to line 24. 16 A. I'm trying to find the page number here. 17 Q. Top left-hand corner of each of the 18 individual pages marked. 19 A. 35. This only goes to 35. 20 Q. If you would hand it to me, I can help. 21 You were on Tab 19. Here's Tab 20. 22 A. Okay. That explains it. 23 Q. All right. Do you see a copy of a 24 transcript of your deposition taken July 19th, 2022? 25 A. Yeah, I guess.</p>

<p style="text-align: right;">Page 37</p> <p>1 Q. If you would go to page 36. 2 A. Page 36, okay. 3 Q. I'll read lines 10 through 24. Please 4 tell me if I've read them correctly. 5 "Okay. Sir, in order to have meaningful 6 testimony -- 7 "ANSWER: Right. 8 "QUESTION: -- a witness must be armed 9 with facts, fair? 10 "ANSWER: Generally. 11 "QUESTION: Okay. Is there a situation 12 that you can imagine where it wouldn't be important 13 for a witness to know the facts of a case? 14 "ANSWER: No. 15 "QUESTION: So would you agree that in 16 order to offer any opinions about any matter, it's 17 important for a witness to be equipped with the 18 facts, fair? 19 "ANSWER: Yeah." 20 Did I read that correctly? 21 A. Yep. 22 Q. Okay. So in terms of the facts of the 23 case that were before us last time, you had not 24 reviewed any of the pleadings in this case, any of 25 the deposition testimony. You had not reviewed the</p>	<p style="text-align: right;">Page 39</p> <p>1 legislative history. Do you recall -- 2 A. I do. 3 Q. Okay. And last time we were together at 4 deposition, you had not reviewed the Congressional 5 Record or the legislative history of this section of 6 the Affordable Care Act, correct? 7 A. I have not read the record, that's 8 correct, because I was part of the record. I spoke 9 on the floor of the Senate. Part of the record was 10 a recording of what I said. 11 Q. Sir, in terms of any communication that 12 you've had with the Social Security Administration 13 about the EHH provisions of the Affordable Care Act, 14 we have reviewed no communication between you and 15 the Social Security Administration at your 16 deposition today or prior, fair? 17 A. Correct. 18 Q. Okay. And in terms of any communication 19 that you've had with the Social Security 20 Administration, have you had any communication with 21 the Social Security Administration in the last 10 22 years? 23 A. No -- well, 10 years? No. 24 Q. Okay. In terms of any communication with 25 the CARD clinic or any individual who has ever</p>
<p style="text-align: right;">Page 38</p> <p>1 statement of undisputed facts or any of the other 2 documents that Mr. Bechtold put in front of you 3 today. Is that fair? 4 A. Yep. 5 Q. And, sir, in terms of the disclosure in 6 this case -- 7 8 (Pause) 9 10 Q. (By Mr. Duerk) Sir, in terms of the 11 information in writing that I had from you about the 12 opinions you intended to express last time, the only 13 information that I had from you was your declaration 14 to the best of your knowledge, fair? 15 A. I guess. You tell me if that's all you 16 had. I don't know what you had. 17 Q. Yeah, right. I'll represent to you that 18 that's all I had. 19 A. Okay. If that's case, that's the case. 20 It must be a fact. 21 Q. Yeah, I was not aware of any documents 22 that you would be testifying about. 23 In terms of the testimony that you 24 provided related to your expert opinions last time, 25 I asked you about the Congressional Record and</p>	<p style="text-align: right;">Page 40</p> <p>1 worked at the CARD clinic, have you had any 2 communication with anybody at the CARD clinic in the 3 last 10 years? 4 A. Yes. 5 Q. Okay. Who? 6 A. Dr. Black. 7 Q. Okay. Aside from Dr. Black, have you 8 communicated with anybody else at CARD? 9 A. No. 10 Q. And when was the last time you recall 11 talking to Dr. Black? 12 A. Oh, maybe months ago, a year ago. He 13 asked me if I would be a witness in this case, and I 14 said yes. 15 Q. Okay. Outside of Dr. Black asking that 16 question, do you recall any specifics of that 17 communication? 18 A. No. I just said I'd be honored. I'd 19 love to. 20 Q. Prior to that conversation with 21 Dr. Black, when was the last time you recall having 22 any conversations with him? 23 A. Oh, I went up to the clinic. They had a 24 dedication up there. 25 Q. And, sir, that was in about 2009 or 2010?</p>

<p>1 A. I can't get it -- it could be, but it was 2 several years ago.</p> <p>3 Q. Okay. I believe when we visited at your 4 last deposition, you said it was approximately 5 10 years ago, maybe more. Does that sound about 6 right?</p> <p>7 A. It could -- it could be more.</p> <p>8 Q. Okay. So that would put us at 2013 --</p> <p>9 A. Yeah.</p> <p>10 Q. -- perhaps earlier?</p> <p>11 A. Earlier. Earlier.</p> <p>12 Q. Earlier than --</p> <p>13 A. Because I went to Beijing in 2013.</p> <p>14 Q. Okay.</p> <p>15 A. So it had to have been earlier.</p> <p>16 Q. In terms of that dedication ceremony, 17 what conversations, if any, do you remember having 18 with Dr. Black or any other CARD staff members?</p> <p>19 A. Just how this was moving along.</p> <p>20 Q. In terms of any communication with 21 anybody from the SSA during that time frame, do you 22 remember speaking with anybody at the Social 23 Security Administration?</p> <p>24 A. Nope.</p> <p>25 Q. Okay. In terms of your involvement in</p>	<p>1 A. No.</p> <p>2 Q. Have you seen or been alerted to any 3 e-mails from the Social Security office sent to CARD 4 that indicate to CARD that they are not to submit 5 patients who have not been diagnosed with an 6 asbestos-related disease for Medicare benefits?</p> <p>7 A. No.</p> <p>8 Q. And, sir, in your mind, both during your 9 deposition testimony today and last July, it appears 10 that you would be concerned if there were patients 11 who were submitted for Medicare benefits who did not 12 have a diagnosis of asbestos-related disease, fair?</p> <p>13 A. No, not fair. Because it could be a 14 B Reader to find a positive determination, and then 15 that would indicate that that person has an 16 asbestos-related disease.</p> <p>17 Q. I understand what you're saying today. 18 I've not heard this testimony from you before. So 19 I'll go about it this way --</p> <p>20 MR. BECHTOLD: Misstates his testimony.</p> <p>21 Q. (By Mr. Duerk) I'll go about it this 22 way: In order to be Medicare eligible, it is 23 important for a person to be sick with 24 asbestos-related disease, correct?</p> <p>25 A. Yep.</p>
<p>1 passing legislation, the law is set forth in the 2 published statute itself, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And in terms of how that law is 5 interpreted or enforced, once legislation is passed 6 into law, it's no longer necessarily within your 7 purview to enforce that law, correct?</p> <p>8 A. Well, no. I mean, if I have something to 9 do with passing a law, I make sure that the law is 10 upheld. So I do have that interest.</p> <p>11 Q. Right. But in terms of ensuring that the 12 law is adhered to, abided by, read, recognized, and 13 understood, that's not your task or your 14 responsibility at that point, fair?</p> <p>15 A. Certainly.</p> <p>16 Q. Sir, I'd like to talk specifically about 17 whether or not anyone at CARD has alerted you to 18 conversations that CARD has had with the Social 19 Security Administration about these provisions in 20 the Affordable Care Act related to a diagnosis of 21 asbestos-related disease?</p> <p>22 A. No.</p> <p>23 Q. No? Okay.</p> <p>24 Are you aware of the sworn testimony from 25 SSA employee Heather Hilman in this case?</p>	<p>1 Q. Okay. And your intent was to make sure 2 that individuals in Libby would receive Medicare 3 benefits if they were sick due to asbestos exposure, 4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. It was your intent and the intent 7 of other United States Senators to make sure that, 8 in order for a patient to be Medicare eligible, they 9 had to have been exposed to Libby asbestos and be 10 suffering from that exposure to Libby asbestos?</p> <p>11 A. Right.</p> <p>12 Q. It was not your intent to allow patients 13 to be submitted for lifetime Medicare benefits if 14 they were not sick due to an exposure to Libby 15 amphibole, correct?</p> <p>16 A. Correct.</p> <p>17 Q. So if you had a patient who CARD knew not 18 to be sick due to an exposure to Libby asbestos, it 19 was not your intent that that patient should be 20 submitted for lifetime Medicare benefits?</p> <p>21 A. That's a tough question to answer 22 because -- that's a loaded question.</p> <p>23 Q. Okay. In the past --</p> <p>24 A. You guys have -- because basically -- 25 I'll tell you why it's loaded. Because you're</p>

<p style="text-align: right;">Page 45</p> <p>1 making -- you're assuming that the decision was made 2 knowing there's no -- with intent to deceive, and 3 I'm saying a diagnosis could be missed.</p> <p>Q. I understand that diagnoses can be missed, but if a clinician submits a patient for lifetime Medicare benefits, you would expect that that patient would be sick due to their exposure to Libby amphibole, correct?</p> <p>A. Yeah, uh-huh.</p> <p>Q. Is that a "yes"?</p> <p>A. Yes.</p> <p>Q. And, sir, that's the very intent of the Affordable Care Act Libby provisions related to environmental health hazards in your mind, correct?</p> <p>A. Well, in my mind, is it -- I don't know quite -- I don't know what -- what words you used. I didn't hear -- what exact words you used, but my point is, and I've said this many times, if a person's got the disease and the disease has been diagnosed, diagnosed either by CARD or by a B Reader, that's sufficient for coverage.</p> <p>Q. Sir, in order to be eligible for Medicare benefits under the Affordable Care Act, an individual must have a diagnosis of an asbestos-related disease, correct?</p>	<p style="text-align: right;">Page 47</p> <p>1 that if you've got a diagnosis, you're covered. If there's no diagnosis, you're not covered. It's very simple. Correct? 2 A. That's what I said back then. Q. Okay. And you also testified that the purpose of the environmental health hazard provisions in the Affordable Care Act was to provide Medicare benefits for people who were exposed to Libby asbestos, not to provide Medicare benefits to people who are not sick. A. Correct. Q. Okay. And so, sir, at your -- at your deposition, you had a couple of different hypotheticals posed to you. A. They sure were long and complicated. They were very long and complicated. I don't know how relevant they were because they were just hypotheticals. Q. I understand what you're saying here, but I'll see if I can make those -- A. Okay. Q. -- hypotheticals a little bit easier. So say we've got a patient with no diagnosis. We've got a patient with no diagnosis of asbestos-related disease, and we've got a patient</p>
<p style="text-align: right;">Page 46</p> <p>A. Depending what you mean by "diagnosis." Q. All right. That wasn't my question at last summer's deposition. So what I'd like to do is show you that -- your response to that answer, and I'd like to determine if it's still correct, okay? A. Sure. Q. All right.</p> <p>(Whereupon, Clip No. 1 was played for the jury)</p> <p>VIDEO OPERATOR: We are going off the record. The time is 11:17 a.m.</p> <p>(Off the record discussion)</p> <p>VIDEO OPERATOR: We are back on the record. The time is 11:18 a.m.</p> <p>Q. (By Mr. Duerk) Sir, did the three video clips played during the July 19th, 2022 deposition reflect your testimony under oath at that time?</p> <p>A. At that time.</p> <p>Q. Okay. Sir, your intention and the intention of the environmental health hazard statutory provisions in the Affordable Care Act is</p>	<p style="text-align: right;">Page 48</p> <p>1 with a B Read that the B Reader says doesn't have a diagnosis of asbestos-related disease, okay? A. So what's the question? Q. The question is, should that person get Medicare benefits for life? A. Again, who is this person? Describe that person again. Q. Sure. The CARD patient is the subject here. Imagine a CARD patient with no diagnosis of asbestos-related disease from anybody, from a B Reader, from a pulmonologist, from the provider, from CARD. Imagine a patient who has no diagnosis of asbestos-related disease, that patient should not get Medicare. A. Correct. Q. Okay. Now, during your deposition last time, I asked you about B Readers and the diagnostic standards for physicians at CARD. And last time we were together, you said you were not qualified to answer any of those questions. Do you recall that? A. No, I do not. Q. Okay. If you could turn to page 59 of your deposition. I'm looking at line 2. A. Okay. Q. You don't hold yourself out nor have you</p>

<p style="text-align: right;">Page 49</p> <p>1 ever held yourself out as a physician, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. You didn't go to medical school,</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. You don't claim to know or understand the</p> <p>7 intricacies of what's required for a diagnosis of</p> <p>8 asbestos-related disease under the American Thoracic</p> <p>9 Society standards, correct?</p> <p>10 A. Right.</p> <p>11 Q. Now, I'll put the question to you this</p> <p>12 way. So if CARD physicians have admitted under oath</p> <p>13 that B Readers, just radiologists who only look at a</p> <p>14 film, did not diagnose, you would have no reason to</p> <p>15 disagree with me, correct?</p> <p>16 A. Based on what you just told me. Based on</p> <p>17 only what you just said, yes. There may be more to</p> <p>18 it, but that's based upon what you just said.</p> <p>19 Q. Okay. And then I'll read what I asked</p> <p>20 you precisely and what your answer is on page 59.</p> <p>21 A. Okay.</p> <p>22 Q. I'm looking at page 59, line 14.</p> <p>23 "QUESTION: So if CARD physicians have</p> <p>24 admitted under oath that B Readers, just</p> <p>25 radiologists who only look at a film, do not</p>	<p style="text-align: right;">Page 51</p> <p>1 here. Earlier you said a witness should -- an</p> <p>2 expert witness should have the facts. So I went</p> <p>3 back and I reviewed so I'd be -- have -- so I'd have</p> <p>4 the facts.</p> <p>5 Q. All right.</p> <p>6 A. I reviewed the statute to get the facts.</p> <p>7 So now I have more facts, and now I can answer that</p> <p>8 more accurately.</p> <p>9 Q. And, sir, I appreciate that, but when I</p> <p>10 deposed you in July of 2022, my intent was to get</p> <p>11 all of the information from you that we could</p> <p>12 anticipate here at trial so that I had a clear idea</p> <p>13 of what your testimony was.</p> <p>14 A. And now you have a better idea because I</p> <p>15 have more facts.</p> <p>16 Q. I have a better idea of what you're</p> <p>17 saying here today.</p> <p>18 A. Correct.</p> <p>19 Q. But it's also fair to say that you didn't</p> <p>20 say anything about what B Readers did or what a</p> <p>21 radiologist's role was in the diagnostic process at</p> <p>22 your July '22 deposition, correct?</p> <p>23 MR. BECHTOLD: Misstates the testimony.</p> <p>24 THE WITNESS: Before I refreshed my recollection by</p> <p>25 going back and getting the facts.</p>
<p style="text-align: right;">Page 50</p> <p>1 diagnose, you wouldn't have a reason to disagree</p> <p>2 with that?</p> <p>3 "ANSWER: Again, if there's no diagnosis,</p> <p>4 that person should not get -- should not be</p> <p>5 covered."</p> <p>6 Did I read that correctly?</p> <p>7 A. You read that correctly.</p> <p>8 Q. And then I asked you about -- a narrower</p> <p>9 and specific question that I wanted to anchor your</p> <p>10 testimony to. And that question was would you</p> <p>11 dispute that radiologists --</p> <p>12 A. Are you reading now, or is this something</p> <p>13 new?</p> <p>14 Q. This is something new.</p> <p>15 Radiologists --</p> <p>16 A. Okay. Go ahead.</p> <p>17 Q. -- do not diagnose asbestos-related</p> <p>18 disease and are not responsible for diagnosing</p> <p>19 asbestos-related disease.</p> <p>20 A. Correct.</p> <p>21 Q. You say "correct" today, but during your</p> <p>22 testimony in July you said you couldn't answer that</p> <p>23 question. You had no basis to answer that question,</p> <p>24 correct?</p> <p>25 A. Yes, but also I want to do something else</p>	<p style="text-align: right;">Page 52</p> <p>1 MR. BECHTOLD: Misstates the testimony.</p> <p>2 Q. (By Mr. Duerk) Sir, in terms of your</p> <p>3 declaration itself, I'm looking at Tab 17, what's</p> <p>4 been marked as Exhibit 108 here. I'm looking at</p> <p>5 paragraph 10. Do you see that?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. Paragraph 10 says, "After passage</p> <p>8 of the Affordable Care Act, B Reader qualified</p> <p>9 physicians may diagnose asbestos, pleural</p> <p>10 thickening, and pleural plaques based on review of</p> <p>11 plain chest x-rays of individuals, and individuals</p> <p>12 so diagnosed by B Reader physicians are eligible for</p> <p>13 Medicare benefits under the amendments to the Social</p> <p>14 Security Act enacted by the Affordable Care Act."</p> <p>15 Did I read that correctly?</p> <p>16 A. Yep.</p> <p>17 Q. Okay. So your declaration says that</p> <p>18 B Readers may diagnose; not that a B Read equals a</p> <p>19 diagnosis, correct?</p> <p>20 A. That's what it -- I'm sorry, ask the</p> <p>21 question again.</p> <p>22 Q. You said that B Readers may diagnose.</p> <p>23 A. What -- when? Here?</p> <p>24 Q. In your declaration.</p> <p>25 A. Yeah, right.</p>

Page 53	Page 55
<p>1 Q. Right. B Readers may diagnose; not that 2 a B Read equals a diagnosis, correct? 3 A. Correct, uh-huh. Right. 4 Q. Okay. And in the language of the 5 Affordable Care Act itself, Section 1881A, and I'm 6 handing you a copy here, I'm looking at page 2. I'm 7 looking at individuals described under the 8 Affordable Care Act. So right in the middle of the 9 page, do you see the section "Individual Described." 10 I believe we read this into the record earlier. 11 A. Yes, we did. 12 Q. "Individual Described. In general, an 13 individual described in this paragraph is any 14 individual who is diagnosed with one or more 15 conditions described in subparagraph (B). 16 Did I read that correctly? 17 A. Yep. 18 Q. Okay. So at least in terms of the law, 19 the law says that an individual must have a 20 diagnosis of asbestos-related disease, correct? 21 A. That's one condition. That's not -- 22 that's not -- that's not the -- exclusive. 23 Q. Well, let's go directly to the 24 conditions. The conditions described are 25 asbestosis, pleural thickening, or pleural plaques,</p>	<p>1 MR. BECHTOLD: Argumentative. 2 Q. (By Mr. Duerk) I'm going to offer it 3 this way. Sir, in terms of the enforcement of this 4 law and its provisions, enforcement of the law comes 5 from the Social Security Administration, correct? 6 A. Medicare. 7 Q. Medicare and -- 8 A. CMS. 9 Q. CMS. And CMS and the Social Security 10 Administration have a field office in Kalispell, 11 Montana to the best of your knowledge? 12 A. Right. Uh-huh, right. 13 Q. Okay. And the Medicare claim forms, the 14 EHH forms, are filled out and signed by Dr. Black 15 and providers at the CARD clinic to the best of your 16 knowledge, correct? 17 A. Correct. 18 Q. And those Medicare claim forms, to the 19 best of your knowledge, are then submitted to the 20 Social Security Administration field office in 21 Kalispell, Montana? 22 A. I -- I guess -- I don't know. 23 Q. Okay. Have you ever spoken with any of 24 the field office personnel? 25 A. No, no.</p>
Page 54	Page 56
<p>1 correct? 2 A. Yep. 3 Q. Okay. And so here in the law, in order 4 to receive Medicare benefits, a patient must have a 5 diagnosis. And this is a -- this is a proposition 6 that you agreed with during your prior deposition, 7 correct? 8 A. Well, it all comes down to what the 9 definition of "diagnosis" is. 10 Q. Right. 11 A. That's what it's all about. 12 Q. Right. 13 A. And under the statute, a diagnosis at 14 large is a diagnosis by the CARD clinic or an 15 affirmative determination by a B Reader. 16 Q. Okay. 17 A. That is, at large, a diagnosis. 18 Q. That is what you are saying -- 19 A. Correct. 20 Q. -- but the law here -- 21 A. And that's what the law says, too. 22 Q. Sir, the law says an individual must have 23 a diagnosis. 24 A. I'm sorry. I think you're quibbling. 25 Q. No, I'm not quibbling.</p>	<p>1 Q. Okay. You're not aware of the policies 2 and procedures they have for handling CARD Medicare 3 claim forms? 4 A. No. 5 Q. You've never seen the program operations 6 manual system? 7 A. No. 8 Q. Okay. You've never seen any e-mails back 9 and forth -- 10 A. Never. 11 Q. Let me ask the question. 12 A. I'm answering it anyways. It's none. Go 13 ahead. Ask the question. 14 Q. I'm sure you've seen some e-mails before, 15 but here's the question. You've never seen any 16 e-mails between the CARD clinic and the Social 17 Security Administration field office personnel, 18 correct? 19 A. Correct. 20 Q. Okay. And you've not seen any e-mails 21 recently between the CARD clinic and Social Security 22 Administration as recently as two weeks ago, 23 correct? 24 A. Correct. 25 Q. So if I told you that the Social Security</p>

<p style="text-align: right;">Page 57</p> <p>1 Administration insisted that CARD patients have a 2 diagnosis of asbestos-related disease in order to be 3 eligible for Medicare benefits, you've not seen that 4 communication -- 5 A. Correct. 6 Q. -- and you would have no reason to 7 disagree with me, correct? 8 A. I have not seen it. 9 Q. Okay. In terms of how the Social 10 Security Administration treats these EHH Medicare 11 claim forms, that's not a job that you ever had, 12 correct? 13 A. Correct. 14 Q. And no one at CARD, prior to your 15 deposition, has shown you any communications 16 recently from SSA to CARD telling them that in order 17 to be Medicare eligible a patient must have a 18 diagnosis, correct? 19 A. I haven't seen anything. 20 Q. All right. 21 A. I've not seen what you're describing. 22 Q. Okay. Sir, it was not your intent, 23 Kathleen Sebelius' intent or Christine Todd 24 Whitman's intent, to the best of your knowledge, to 25 draft legislation that would just make everyone in</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. (By Mr. Duerk) Did that accurately 2 record your testimony from last July? 3 A. It did. It did. 4 Q. So if a patient does not have a diagnosis 5 of an asbestos-related disease, if a patient is not 6 sick from Libby amphibole, they should not be 7 submitted for Medicare benefits, no exceptions, 8 correct? 9 A. Unless a B Reader finds a positive 10 designation. 11 Q. Okay. Let's look at Clip 8. 12 (Whereupon, Clip No. 8 was played 13 for the jury) 14 15 Q. (By Mr. Duerk) Does that accurately 16 reflect your sworn testimony from last July? 17 A. Yes. 18 Q. Okay. Sir, last July, during your 19 testimony, there wasn't any testimony from you about 20 this provision that a B Read constituted a 21 diagnosis, correct? 22 A. Correct. To the best of my recollection, 23 correct. 24 Q. All right. And then in terms of your</p>
<p style="text-align: right;">Page 58</p> <p>1 Libby Medicare eligible if they did not have an 2 asbestos-related disease, correct? 3 A. That would not be my intent either. 4 Q. Okay. It was also never your intent to 5 make it easier to defraud the Medicare program based 6 on any provisions that you put in the Affordable 7 Care Act? 8 A. Correct. 9 Q. There is no provisions stated in 10 Section 1881 of the Affordable Care Act that creates 11 an exception for a patient to be eligible for 12 Medicare benefits without a diagnosis, correct? 13 A. Well, I don't want to quibble myself if 14 it gets us around this word "diagnosis." 15 Q. Let's do it this way: During your 16 deposition last July in 2022, there was some 17 testimony to that point, correct? 18 A. I guess. 19 Q. Well, I'll play you what you said at that 20 time, okay? 21 MR. DUERK: This is Clip 6. 22 (Whereupon, Clip No. 6 was played 23 for the jury)</p>	<p style="text-align: right;">Page 60</p> <p>1 foundation about CARD's methodology for diagnosing, 2 that's not something that you ever made an inquiry 3 about, correct? 4 A. Correct. 5 Q. In terms of the specifics about the 6 intricacies of a diagnosis of asbestos-related 7 disease, you don't claim to understand what's 8 required for a diagnosis of ARD, correct? 9 A. Correct. 10 Q. In terms of the American Thoracic Society 11 standards, are you aware that Dr. Black and other 12 CARD employees have testified that in order to 13 establish a diagnosis of asbestos-related disease 14 that requires more than just a B Read? 15 A. I'm not aware of that. 16 Q. Okay. Are you aware that, according to 17 the sworn testimony of Dr. Black, in order to have a 18 valid diagnosis of an asbestos-related disease, a 19 patient needs either a chest x-ray or a CT scan 20 interpreted showing an asbestos-related disease, 21 they need exposure history showing that the 22 individual was exposed to asbestos at some point, 23 and the patient needs a differential diagnosis 24 ruling out all other possible causes of those 25 radiographic findings?</p>

Page 61	Page 63
<p>1 A. That's a long question. What in the 2 heck? Ask it -- can you shorten that up, please?</p> <p>3 Q. I can. I'll represent to you that under 4 the American Thoracic Society guidelines, a 5 diagnosis requires exposure history, a CT or chest 6 x-ray showing disease, and a differential diagnosis 7 ruling out other potential causes. Were you aware 8 of that?</p> <p>9 A. No.</p> <p>10 Q. And would you defer to Dr. Black and 11 other medical professionals about what is required 12 for a diagnosis of an asbestos-related disease?</p> <p>13 A. I mean, Dr. Black's a physician. I trust 14 Dr. Black.</p> <p>15 Q. All right. Would you also trust the 16 NIOSH certified B Readers, the radiologists, M.D. 17 physicians that over-read all of that?</p> <p>18 A. I have no idea because I don't know them. 19 I know Dr. Black.</p> <p>20 Q. Sir, were you aware that the CARD 21 B Readers, in this case, NIOSH certified B Readers, 22 when they learned of CARD's practice of saying that 23 their B Reads served as the basis of diagnosis left 24 their contracts and will not be reading for CARD 25 anymore?</p>	<p>1 A. You're not going to -- you don't -- not 2 giving me enough. I would have to do my own 3 independent examination, investigation --</p> <p>4 Q. And inquiry.</p> <p>5 A. -- before -- inquiry before I was able to 6 answer that question.</p> <p>7 Q. Right. And you understand that that is 8 the jury's job in this current action to look at all 9 of the facts, look at what the B Readers have said, 10 what the B Readers have done, to look at all of the 11 testimony --</p> <p>12 A. Absolutely. That's a different issue.</p> <p>13 You've asked me a different question.</p> <p>14 Q. All right.</p> <p>15 A. Those are two different points.</p> <p>16 Q. So, sir, do you know what a B Reader is?</p> <p>17 A. I have an idea.</p> <p>18 Q. Okay. What is your idea?</p> <p>19 A. It's a -- it's a -- either a 20 pulmonologist or somebody who's qualified to 21 determine whether or not there's a positive or 22 negative reading of an x-ray or a CT scan.</p> <p>23 Q. All right.</p> <p>24 A. With respect to asbestos.</p> <p>25 Q. And, sir --</p>
<p>1 A. I'm unaware of that.</p> <p>2 MR. BECHTOLD: Misstates the evidence.</p> <p>3 THE WITNESS: I'm unaware of any of that.</p> <p>4 Q. (By Mr. Duerk) Sir, have you heard any 5 information about B Readers, Dr. Kanne, Dr. Meyer, 6 or Dr. Lynch in this case who once served on CARD's 7 panel of expert outside NIOSH B Readers?</p> <p>8 A. No.</p> <p>9 Q. Would it cause you any concern if CARD's 10 thoracic radiologist B Readers, when they learned 11 about this B Read diagnosis practice at CARD, 12 terminated their contracts with the Center for 13 Asbestos-Related Disease?</p> <p>14 A. I would have to know the facts. I 15 don't -- I cannot answer that without more facts.</p> <p>16 Q. All right. If those facts were true and 17 those B Readers have all testified under oath that 18 their reads do not constitute a diagnosis nor could 19 they constitute a diagnosis of asbestos-related 20 disease, would that concern you?</p> <p>21 A. You're assuming your own answer by 22 putting it in. I'd need more facts. I just cannot 23 answer that question.</p> <p>24 Q. Okay. I can provide more facts. Are you 25 aware of what --</p>	<p>1 A. A doctor.</p> <p>2 Q. A doctor. Yep, an MD doctor?</p> <p>3 A. MD doctor, anesthesiologist who's an MD 4 doctor. It could be an anesthesiologist who's an MD 5 doctor.</p> <p>6 Q. Okay. And are you aware of what a 7 B Reading physician is indicating when they find 8 signs of an abnormality or a positive B Read when 9 they look at CARD patient films?</p> <p>10 A. I -- no, I don't know.</p> <p>11 Q. Okay. So --</p> <p>12 A. I'm not a doctor.</p> <p>13 Q. Understood. And, Senator Baucus, if it 14 turned out that when B Reading physicians were 15 looking for abnormalities they would note all 16 abnormalities, not just asbestos-related 17 abnormalities in their reports.</p> <p>18 A. So what's the question?</p> <p>19 Q. Were you aware of that?</p> <p>20 A. No.</p> <p>21 Q. Okay. Sir, were you aware that a 22 positive B Read may indicate abnormalities like 23 emphysema or COPD or a history of smoking 24 cigarettes?</p> <p>25 A. I have no idea. All I know is if there's</p>

<p>1 a -- a doctor found a positive indication of 2 asbestos -- irrespective of emphysema or the 3 others -- asbestos, then that's sufficient.</p> <p>4 Q. All right. Sir, are you aware that when 5 B Readers send their B Read reports back to CARD, 6 there isn't any indication on that form that says 7 whether or not that B Reader believes the patient 8 has an asbestos-related disease?</p> <p>9 A. I think that's accurate. I think that's 10 accurate.</p> <p>11 Q. All right. So a doctor, a B Reading 12 physician, may send a report back to CARD that 13 merely says there's an abnormality of emphysema.</p> <p>14 Are you aware of that possibility?</p> <p>15 MR. BECHTOLD: Foundation.</p> <p>16 THE WITNESS: I'm also aware of the statute that says 17 if a B Read is determined by the B Reader -- if the 18 B Reader determines a positive indication, the statute 19 says that, in effect, is sufficient for coverage.</p> <p>20 Q. (By Mr. Duerk) All right. And, sir, I 21 understand that that's what your testimony is here 22 today. But it's not your intent to have a B Reader 23 find that a patient has no asbestos-related disease 24 and still be submitted for Medicare coverage, 25 correct?</p>	<p>Page 65</p> <p>1 claims for patients knowing that those individual 2 patients did not have a diagnosis of 3 asbestos-related disease, you would find that 4 problematic?</p> <p>5 A. Right.</p> <p>6 Q. In fact, if a doctor submitted patients 7 with a rib fracture or other non-related asbestos -- 8 or problems not related to asbestos for lifetime 9 Medicare benefits, you would find that to be 10 fraudulent, correct?</p> <p>11 A. Well, fraud is intent. So there may not 12 be intent to defraud. It was maybe a mistake. It 13 could be an oversight.</p> <p>14 Q. Sure.</p> <p>15 A. And I don't know if that's fraud or not. 16 That's a legal determination.</p> <p>17 Q. Sir, I'll go ahead and go about it this 18 way. I'm going to play for you Video Clip 11. 19 Please tell me if this is accurately reflects your 20 testimony --</p> <p>21 A. I suppose it's in here, isn't it? It's 22 in the deposition, right?</p> <p>23</p> <p>24 (Whereupon, Clip No. 11 was 25 played for the jury)</p>
<p>1 A. Correct.</p> <p>2 Q. Okay. During your deposition last time, 3 we talked about a hypothetical involving a patient 4 with a fractured rib. Sir, I'll represent to you 5 that a fractured rib shows up as an abnormality on a 6 B Read. Do you have any reason to disagree with me 7 there?</p> <p>8 A. I have no reason to agree or disagree.</p> <p>9 Q. I understand.</p> <p>10 A. I just have no -- I'm not competent to 11 answer that question.</p> <p>12 Q. In your mind, if a patient suffered from 13 a fractured rib, but no signs of asbestos-related 14 disease, would it be proper to submit that patient 15 for lifetime Medicare benefits when they are not 16 sick with asbestos-related disease?</p> <p>17 A. It would not be proper.</p> <p>18 Q. Right. Sir, in terms of that 19 fractured-rib patient, we discussed that 20 hypothetical during your deposition in July of last 21 year, right?</p> <p>22 A. I vaguely remember all of us talk about 23 fractured ribs, yes.</p> <p>24 Q. Okay. So, in your mind, in patients with 25 a rib fracture, if a doctor had submitted Medicare</p>	<p>Page 66</p> <p>1</p> <p>2 Q. (By Mr. Duerk) Did that accurately 3 reflect your sworn testimony from last --</p> <p>4 A. Yes.</p> <p>5 Q. All right. And, sir, have you ever seen 6 any correspondence from the CARD clinic where the 7 CARD clinic indicated to its own patients that the 8 patient did not have a diagnosis of asbestos-related 9 disease and yet they were submitting that patient 10 for Medicare benefits for life anyway?</p> <p>11 A. I'm unaware.</p> <p>12 Q. Did you ever see any correspondence from 13 the CARD clinic where CARD indicated to the patient 14 that a B Reader found an abnormality but this had no 15 indication of any health condition that should cause 16 the patient any concern but the patient was still 17 being submitted for Medicare benefits?</p> <p>18 A. I'm unaware of any of that.</p> <p>19 Q. Were you aware, sir, that in over 100 20 individual patient cases, CARD told the patient that 21 they didn't have a diagnosis of asbestos-related 22 disease from CARD or anywhere else, that the patient 23 did have an abnormality that was identified by an 24 outside Reader, but that that abnormality was 25 nothing that had significant health implications nor</p>

<p style="text-align: right;">Page 73</p> <p>1 congressional testimony about doctors outside of 2 Libby really not understanding the problem; is that 3 right?</p> <p>4 A. Yeah.</p> <p>5 Q. And I believe that testimony on the 6 Congressional Record was given in support of the 7 changes in the Affordable Care Act, correct?</p> <p>8 A. I don't know about changes. It was 9 supported -- the provision was put in the Act.</p> <p>10 Q. Right. The provision -- I'm sorry. The 11 provision that was to be put in the Act. And I 12 think we could probably determine when that -- when 13 you gave that testimony or when you made --</p> <p>14 A. Oh, yeah, it would be in there.</p> <p>15 Q. Do you mind referring to the record just 16 to see what year that testimony was provided?</p> <p>17 A. It would have been after the passage of 18 the Act, so 2000 -- after 2010. What tab is that? 19 Where do I find it? Where do I find it?</p> <p>20 MR. BECHTOLD: Tab 3.</p> <p>21 THE WITNESS: Okay. Oh, this is -- oh, this is '09.</p> <p>22 Q. (By Mr. Duerk) So the remarks that you 23 made on the record about other physicians outside of 24 Libby not necessarily understanding the disease, 25 those remarks were made in 2009; is that correct?</p>	<p style="text-align: right;">Page 75</p> <p>1 this understanding that there were outside 2 physicians in Libby and the surrounding area in 2009 3 at the time you gave this testimony that didn't 4 understand Libby disease, aside from Dr. Whitehouse, 5 a CARD physician, and perhaps Dr. Holm, you, 6 yourself, didn't speak with other outside 7 physicians.</p> <p>8 A. No, but it's common knowledge. It was 9 common knowledge. I mean, lots of people knew. 10 Nobody disputed that.</p> <p>11 Q. Okay. Back in 2009 is when you made 12 those statements on the record. Since 2009, have 13 you spoken with any other outside radiologists, 14 pulmonologists, thoracic radiologists, or any other 15 doctors who have looked at, examined, scanned, and 16 interpreted images of CARD patients?</p> <p>17 A. No.</p> <p>18 Q. Okay.</p> <p>19 MR. DUERK: I'm seeing a note that we should take a 20 break, so we will take a break.</p> <p>21 THE WITNESS: Okay.</p> <p>22 VIDEO OPERATOR: We're going off the record. The 23 time is 12:00 p.m.</p> <p>24</p> <p>25 (Whereupon, a recess was taken)</p>
<p style="text-align: right;">Page 74</p> <p>1 A. Looks like it.</p> <p>2 Q. Okay. And in terms of any conversations 3 you've had with outside physicians or radiologists, 4 you didn't communicate with outside doctors about 5 their understanding of Libby disease?</p> <p>6 A. Oh, I did.</p> <p>7 Q. In terms of any conversations with 8 outside doctors, aside from Dr. Whitehouse --</p> <p>9 A. Other than Whitehouse, no. Well, no, 10 there might have been a guy down in --</p> <p>11 Q. In Texas?</p> <p>12 A. Texas, yes. Other than Dr. Whitehouse -- 13 yes, Holm I think his name is, in Texas.</p> <p>14 Q. Holm in Texas?</p> <p>15 A. I think that's his name.</p> <p>16 Q. But aside from Dr. Whitehouse who worked 17 for the CARD clinic, who did work with the CARD 18 clinic, and this doctor in Texas, Dr. Holm, did you 19 speak with any other outside physician?</p> <p>20 A. I did not, but my staff could well have, 21 and I have a very good staff, and I depend a lot on 22 my staff to get the facts.</p> <p>23 Q. All right. But in terms of --</p> <p>24 A. Personally, no.</p> <p>25 Q. Personally, right. And so in terms of</p>	<p style="text-align: right;">Page 76</p> <p>1 VIDEO OPERATOR: We are back on the record. The time 2 is 12:02 p.m.</p> <p>3 Q. (By Mr. Duerk) And, Senator, just in 4 terms of your experience with physicians from the 5 Mayo Clinic, physicians from the Mayo Clinic aren't 6 quack doctors, correct?</p> <p>7 A. Correct. Hope not. I go there.</p> <p>8 Q. Doctor, in terms of the way in which 9 patients that are enrolled for Medicare, there are a 10 couple of different definitions and concepts within 11 the Social Security Act procedures, And I just want 12 to see if they square with your understanding of how 13 a disease is diagnosed, okay?</p> <p>14 In the Medicare provisions, in the POMS, 15 there's reference to a physician as a provider. And 16 the provider, the diagnosing physician, is one who 17 takes into account all of the information about that 18 patient before rendering a diagnosis. Does that 19 concept make sense to you?</p> <p>20 A. Yeah.</p> <p>21 MR. BECHTOLD: Foundation, relevance.</p> <p>22 Q. (By Mr. Duerk) In terms of the types of 23 information that the provider needs to take into 24 account, they take into account the scans, or the CT 25 scans, or the chest x-rays. The provider also</p>

<p style="text-align: right;">Page 77</p> <p>1 performs an in-person assessment and looks at 2 medical history.</p> <p>3 Are those concepts, do they square with 4 your understanding of what a provider does?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. In the Social Security 7 Administration Program Operation Manual Systems, 8 what I'll call the POMS, it's the provider, it's the 9 doctor who has the most information about the 10 patient who makes that diagnosis.</p> <p>11 Does that square with your understanding 12 of how things work?</p> <p>13 A. Yeah.</p> <p>14 MR. BECHTOLD: Foundation, relevance.</p> <p>15 Q. (By Mr. Duerk) All right. If the 16 physician -- if the doctor with the most information 17 about a patient, the diagnosing physician, the 18 doctor who has read the CT scan and the chest x-ray, 19 the doctor who completed an inpatient assessment, 20 the doctor who reviewed the exposure history of the 21 patient, the diagnosing physician, if that doctor 22 says to the patient, "You're not sick. You don't 23 have asbestos-related disease," based on your 24 understanding of the Affordable Care Act, would it 25 be proper for that patient to be submitted for</p>	<p style="text-align: right;">Page 79</p> <p>1 says you're either diagnosed by CARD or by a 2 B Reader. Technically, the term "diagnosis" is not 3 used by the B Reader, so it depends. The point here 4 is -- in the statute is not to narrow the 5 determination down to one doctor and one doctor's 6 decision only.</p> <p>7 Q. Okay. Let's look at page --</p> <p>8 A. So that's why I answered the question the 9 way I did.</p> <p>10 Q. Sure. Let's look at page 58, lines 8.</p> <p>11 A. 58.</p> <p>12 Q. Line 8.</p> <p>13 A. Yeah.</p> <p>14 Q. "Within the context of this hypothetical, 15 let's say that the doctor with the most information, 16 the diagnosing physician, the doctor who has the CT 17 scan and the chest x-ray, the doctor who's completed 18 an inpatient assessment, the doctor who's reviewed 19 the exposure history of the patient, the diagnosing 20 physician in this instance says, quote, "You are not 21 sick. You don't have asbestos-related disease. 22 "Based on your understanding of the 23 Affordable Care Act, would it be proper for that 24 patient to be submitted for Medicare benefits?"</p> <p>25 A. Well, that's what I said there, but since</p>
<p style="text-align: right;">Page 78</p> <p>1 Medicare benefits?</p> <p>2 A. Are we talking about generally? Are we 3 talking about this Libby -- the Libby cases? What 4 are we talking about?</p> <p>5 Q. Libby cases.</p> <p>6 A. No, that's -- I'm sorry. The question is 7 way too long. I couldn't remember it all. Can you 8 ask a simpler question?</p> <p>9 Q. Sure. If we've got the doctor with the 10 most --</p> <p>11 A. Now, we're talking about Libby?</p> <p>12 Q. We're talking about Libby.</p> <p>13 A. Okay.</p> <p>14 Q. If the doctor with the most information, 15 who's seen the CT scans, he's read them, interpreted 16 them, if the doctor who has taken the exposure 17 history, who's done the inpatient assessment, if 18 that doctor, seeing all of the information, tells 19 the patient, "You're not sick. You don't have 20 asbestos-related disease," should that patient be 21 submitted for Medicare?</p> <p>22 A. Might. Yes, possibly.</p> <p>23 Q. Might? Why?</p> <p>24 A. Because it's a different doctor. There 25 are different doctors involved here. The statute</p>	<p style="text-align: right;">Page 80</p> <p>1 then I've gone back --</p> <p>2 Q. Sorry, I'm not done.</p> <p>3 A. Okay, go ahead.</p> <p>4 Q. "ANSWER: If the patient does not have 5 disease, the answer is no." 6 Did I read that correctly?</p> <p>7 A. You did, but I'm going to say that I've 8 gone back, and I have more facts now. I'm an expert 9 witness. I'm supposed to have more facts.</p> <p>10 Q. Okay.</p> <p>11 A. And I got more facts. And what facts -- 12 I went back and read the statute and refreshed my 13 recollection of the statute. So that's why my 14 answer is -- it's not -- it would be different now 15 than what I said then.</p> <p>16 Q. Okay. The question that I asked you back 17 then starting on line 22, page 58, "And so 18 consistent with the original purpose of the" --</p> <p>19 A. I'm sorry. Where are you now?</p> <p>20 Q. Page 58, line 22.</p> <p>21 A. Okay.</p> <p>22 Q. "And so consistent with the original 23 purpose of the EHH provisions in the Affordable Care 24 Act, without a diagnosis, that patient shouldn't be 25 deemed Medicare eligible?"</p>

<p style="text-align: right;">Page 81</p> <p>1 Your answer, "Without a diagnosis, that's 2 correct." 3 A. Okay. But -- 4 Q. That's what you said last year under 5 oath, correct? 6 A. That's what I said back then. 7 Q. All right. 8 A. But I'm -- it's more complicated than 9 you're implying there. 10 Q. Senator Baucus, in your mind, would it 11 ever be proper to knowingly submit a patient for 12 Medicare benefits when the physician knew that 13 patient wasn't sick with an asbestos-related 14 disease? 15 A. It would be problematic. Again, I want 16 to know more facts, want to know more facts. 17 Q. Right. And you've described that 18 scenario in the past as fraud, correct? 19 A. I've used the word in the prior 20 deposition. It would be fraudulent, all things 21 considered, if both the B Reader and -- in my 22 hypothetical, if both the B Reader and the CARD 23 physician intentionally knew that there was no 24 disease, that would be fraud. 25 Q. Right. Right. So if the B Reader saw</p>	<p style="text-align: right;">Page 83</p> <p>1 Act case here? 2 A. No. 3 Q. Okay. In terms of the complaint itself, 4 the amended complaint, have you seen what the 5 precise allegations are against the CARD clinic? 6 A. No. I just want to help people in Libby. 7 That's my concern. 8 Q. I understand. And you understand, sir, 9 that this case is not about the people in Libby who 10 are sick with an asbestos-related disease. This 11 fraud case is a case about the people in Libby who 12 are not sick. Do you understand that? 13 A. No. 14 Q. Okay. Okay. That's helpful. So if I 15 were to tell you that there is deposition testimony 16 from CARD patients who have said under oath that 17 they are aware -- one patient in particular I'm 18 thinking of has stated she's aware that she doesn't 19 have an asbestos-related disease because CARD told 20 her she doesn't have an asbestos-related disease, 21 and, yet, nevertheless, she's still getting gym 22 membership benefits under the Medicare program. Is 23 that testimony that you've heard about before? 24 A. I have not heard about anything like 25 that.</p>
<p style="text-align: right;">Page 82</p> <p>1 that the patient didn't have an asbestos-related 2 disease but instead chronic obstructive pulmonary 3 disease and CARD knew that, and they submitted a 4 Medicare claim form for lifetime Medicare benefits 5 anyway, that would be fraud, right? 6 A. I don't know. I'd have to have the 7 facts. I can't answer that question. That's way 8 too complicated. There's too many assumptions in 9 that question. 10 Q. And in terms of the facts in this case, 11 did you ask for more facts before you rendered your 12 expert witness opinions in this matter? 13 A. Did I ask for more facts? 14 Q. Yes. 15 A. I asked myself. I went back to -- I 16 refreshed my recollection of the statutes and 17 declaration. 18 Q. Did CARD provide you with more facts? 19 A. No. 20 Q. Did CARD provide you with any medical 21 records related -- 22 A. No. 23 Q. Did they provide you with any medical 24 records related to any of the individual CARD 25 patients that are the subject of the False Claims</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. All right. And if there was a patient 2 who did actually fall into that category who has 3 been told by CARD repeatedly, "You are not sick. 4 You don't have asbestos-related disease," and, yet, 5 CARD submitted her for Medicare benefits for life so 6 that she could get gym membership paid for by the 7 people of the United States, would you find that 8 problematic? 9 A. I find it concerning, but I need more 10 facts before making a decision. 11 Q. Right. And in terms of facts related to 12 this case, aside from your declaration and the 13 exhibits that I learned you were going to be talking 14 about today, you haven't seen any other written 15 information about those CARD patients, fair? 16 A. That's true. 17 Q. Okay. Sir, I apologize if any of my 18 questions seem disrespectful here, but what I'm 19 trying to get at is -- I do appreciate the work that 20 you've done for the people of Libby. I do. But is 21 it benefitting the people of Libby, if there's fraud 22 in the system being perpetrated by CARD, to let that 23 fraud continue? 24 A. I'm unaware of any fraud. 25 Q. I'm well aware of that. However, my</p>

<p style="text-align: right;">Page 85</p> <p>1 question stands, does it benefit anybody in Libby, 2 if there's fraud in the way that CARD submits people 3 for Medicare benefits, to let that practice 4 continue?</p> <p>5 A. I don't -- I'm against fraud.</p> <p>6 Q. Understood. And you have not seen any of 7 the evidence of fraud in this case?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. So is it fair to say that without 10 seeing any evidence of the alleged fraudulent 11 conduct in this case, you wouldn't be able to make 12 up your mind one way or another whether fraud had 13 occurred?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And CARD has not provided you with 16 any evidence other than what we've looked at on the 17 record today. Is that fair?</p> <p>18 A. Right.</p> <p>19 Q. Okay.</p> <p>20 MR. DUERK: If we could take a short break, I might 21 be able to figure out how to shorten this up.</p> <p>22 VIDEO OPERATOR: We're going off the record. The 23 time is 12:14 p.m.</p> <p>24</p> <p>25 (Whereupon, a recess was taken)</p>	<p style="text-align: right;">Page 87</p> <p>1 in the Affordable Care Act to the residents of 2 Libby, Montana?</p> <p>3 A. It is something I would do, but I do not 4 specifically remember this one.</p> <p>5 Q. All right. If we could look at the first 6 page of Exhibit 160. It appears that there's a back 7 and forth about the subject here, "Baucus mailing."</p> <p>8 I'm looking at what I think is the very last e-mail 9 in this train from Tanis Hernandez to several other 10 people.</p> <p>11 A. Are you at the top of the page?</p> <p>12 Q. I am. It indicates that there are some 13 handwritten notes on the bottom of this mailing.</p> <p>14 Sir, do you recall either the mailing itself or any 15 handwritten notes on the bottom of the mailing?</p> <p>16 A. No.</p> <p>17 Q. Okay. Let's do this. If we could turn 18 to the next tab. Tab 25. What I'll do is mark 19 this -- oops, I think you might be one back -- 20 Tab -- behind Tab 25.</p> <p>21 A. There it is. Found it.</p> <p>22 Q. There we go.</p> <p>23 A. There it is.</p> <p>24 Q. I'll mark this as Exhibit 161 for the 25 record.</p>
<p style="text-align: right;">Page 86</p> <p>1 VIDEO OPERATOR: We are back on the record. The time 2 is 12:28 p.m.</p> <p>3 Q. (By Mr. Duerk) Senator Baucus, I'd like 4 you to look at what I'll mark as Exhibit 160 in this 5 case. It's at Tab 24 in your binder.</p> <p>6 A. Okay.</p> <p>7</p> <p>8 (Deposition Exhibit No. 160 was marked 9 for identification)</p> <p>10</p> <p>11 Q. (By Mr. Duerk) Okay. Sir, if you would 12 look at page 2 of Exhibit 160.</p> <p>13 A. Yep.</p> <p>14 Q. Do you see an e-mail from Tanis Hernandez 15 to a number of other individuals?</p> <p>16 A. I do, down at the bottom.</p> <p>17 Q. Yep. The subject is "Baucus mailing"?</p> <p>18 A. Yep.</p> <p>19 Q. Sir, I can't imagine that you have seen 20 this e-mail before, but what I'm hoping to do is 21 show you this e-mail to try to refresh your 22 recollection about the subject here that says, 23 "Baucus mailing."</p> <p>24 Sir, in about 2010, do you recall sending 25 out a community-wide mailer about the new provisions</p>	<p style="text-align: right;">Page 88</p> <p>1 (Deposition Exhibit No. 161 was marked 2 for identification)</p> <p>3</p> <p>4 Q. (By Mr. Duerk) Do you see what appears 5 to be the mailing referenced in the prior e-mails 6 with your signature on it?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Does the website at the bottom of 9 the page, www.baucus.senate.gov, is that your -- was 10 that one of your e-mails?</p> <p>11 A. I presume.</p> <p>12 Q. Okay. And does this appear to be a true 13 and accurate copy of a mailing titled "Dear Friends" 14 that was sent out --</p> <p>15 A. As near as I can tell, yes.</p> <p>16 Q. Okay.</p> <p>17 MR. DUERK: So I would move to admit this exhibit.</p> <p>18 Q. (By Mr. Duerk) If you would please start 19 from the beginning and just read this mailing, that 20 would be helpful, Senator.</p> <p>21 A. All right. "I'm so pleased to be writing 22 you" -- excuse me. "I'm so pleased to be writing 23 you after the passage of the health care reform bill 24 that will lower costs and provide quality affordable 25 health coverage to all Montanans. In addition, the</p>

<p style="text-align: right;">Page 89</p> <p>1 Patient Protection and Affordable Care Act sets up a 2 new system for screenings and medical care for 3 people affected by asbestos-related disease. In 4 June 2009, I joined the EPA Administrator Jackson 5 with the announcement that a public health emergency 6 was declared at the Libby/Troy Superfund site. I 7 have been pushing for this since it was first 8 considered by the EPA in 2001. The public health 9 emergency triggers screening and the medical care 10 for affected people.</p> <p>11 "Before Libby, this process had never 12 been used, so there's no system set up. But the 13 health care reform bill does just that. I wrote the 14 section of the bill that provides funding for 15 screening services. If a person is determined to 16 have an asbestos-related disease that requires 17 treatment, it allows that person to enroll in 18 Medicare. This program is permanent. In addition, 19 it allots funds for a pilot program to provide 20 specialized medical services that are not covered by 21 Medicare. It will ensure that people affected by 22 asbestos-related disease from the W.R. Grace 23 operation in Libby, Montana will receive the health 24 care they need.</p> <p>25 "Now that healthcare reform bill is law,</p>	<p style="text-align: right;">Page 91</p> <p>1 Libby, Montana asbestos exposure,"' closed quote. 2 First, did I read that correctly? 3 A. Yes, you did. 4 Q. Okay. And, sir, in terms of this 5 mailing, was this consistent with the messaging that 6 was being sent out to the people of Libby about the 7 passage of the Affordable Care Act? 8 A. It's -- it's consistent, yeah. 9 Q. Okay. And, sir, in terms of the 10 handwritten language there, is this also consistent 11 with what your understanding is about the way that 12 patients would report their condition to the Social 13 Security Administration to get Medicare coverage? 14 A. It's a good start. 15 Q. Okay. And to the best of your knowledge, 16 what else is required to submit to the Social 17 Security Administration to get Medicare coverage? 18 A. Well, I don't know. I never bought it. 19 Q. Do you have any understanding of what 20 CARD would submit in support of Medicare benefits 21 for its patients? 22 A. No, I just trust them to do the right 23 thing. 24 Q. And this -- at least, according to the 25 e-mail that we see and your mailing, it says that</p>
<p style="text-align: right;">Page 90</p> <p>1 we're working to get the system up and running. In 2 the meantime, people who need screening or medical 3 care for asbestos-related disease can enroll in the 4 FLASH program, the Federal Libby Asbestos Special 5 Healthcare program, funded with the \$6 million grant 6 from the Department of Health and Human Services 7 that I secured in '09. This program will provide 8 coverage for services that aren't covered by -- but 9 are not covered by other insurance or 10 asbestos-related disease programs. For details on 11 how to enroll, contact my office toll free at 12 (800) 332-6106 or in Kalispell at (406) 756-1150."</p> <p>13 Q. And, sir, is that your signature on this 14 mailer?</p> <p>15 A. It is. Well, it looks like it.</p> <p>16 Q. Looks like it.</p> <p>17 I'd like to look at the bottom of the 18 page in Exhibit 161 and see if you know the source 19 of it. First, I'll read it to you, and tell me if 20 I've read it correctly.</p> <p>21 "If you 1) Have an asbestos-related 22 disease diagnosed by a medical provider, 2) Are not 23 on Medicare, call 1-888-482-3128 and say," quote, 24 "I want to sign up for Medicare coverage due to my 25 asbestos-related disease that resulted from the</p>	<p style="text-align: right;">Page 92</p> <p>1 CARD patients should report to Social Security if 2 they have an asbestos-related disease diagnosed by a 3 medical provider, correct?</p> <p>4 A. Right.</p> <p>5 Q. All right. And in terms of the 6 conversation we've had back and forth, the provider 7 is the doctor or the healthcare facility --</p> <p>8 A. Right.</p> <p>9 Q. -- itself, correct? Okay.</p> <p>10 Nowhere on your mailing or this 11 handwritten note does it indicate that individuals 12 are eligible for Medicare based on a radiographic 13 report alone, correct?</p> <p>14 A. No, but that's the reason for the 15 telephone number, to get the facts.</p> <p>16 Q. Right. And when the Social Security 17 Administration is called about those facts, the 18 first fact that needs to be established is that the 19 patient has an asbestos-related disease diagnosed by 20 a medical provider, correct?</p> <p>21 A. Generally. I mean, it's -- the main 22 point is, the statute is there to help people. The 23 mailing's sent out to give notice, and here's a 24 telephone number to see if you qualify.</p> <p>25 Q. Right. Based on all of the material that</p>

<p style="text-align: right;">Page 93</p> <p>1 I've seen about Medicare benefits from your office, 2 all of that material indicates that in order to get 3 Medicare, the person has to be sick due to 4 asbestos-related disease. Is that your 5 understanding?</p> <p>6 A. Basically, yeah.</p> <p>7 Q. Yeah. And I've never seen, sir, a 8 mailing from your office that indicates that 9 patients who aren't sick due to an exposure to Libby 10 asbestos are eligible for Medicare. Is that your --</p> <p>11 A. You've said you've never seen it, and I 12 trust you haven't.</p> <p>13 Q. I haven't. But let me ask it this way: 14 Are you aware of any communication --</p> <p>15 A. No.</p> <p>16 Q. Sorry. Just for the record, I've got to 17 ask my question.</p> <p>18 But are you aware of any communications 19 sent by your office that told individuals in Libby 20 that they were eligible for Medicare without being 21 sick due to an exposure to Libby asbestos?</p> <p>22 A. No.</p> <p>23 Q. Okay. And in terms of the communication 24 that you've received from CARD that you're aware of, 25 have you ever received any communication from CARD</p>	<p style="text-align: right;">Page 95</p> <p>1 THE WITNESS: Okay. 2 MR. BECHTOLD: I just have a couple follow-ups.</p> <p>3</p> <p>4 REDIRECT EXAMINATION</p> <p>5</p> <p>6 BY MR. BECHTOLD:</p> <p>7 Q. I'd like to take a look at Exhibit 161.</p> <p>8 A. Which book?</p> <p>9 Q. Right in front of you. It's the --</p> <p>10 your --</p> <p>11 A. Where is 161?</p> <p>12 Q. It's the one that you have right in front 13 of you now. It's your letter to the people from 14 Libby.</p> <p>15 A. Okay.</p> <p>16 Q. In the second paragraph, the third 17 sentence, it says, "I wrote a section of the bill 18 that provides funding for screening services."</p> <p>19 Do you see that?</p> <p>20 A. Second paragraph? Yeah, I do.</p> <p>21 Q. So you wrote a section of the Act that we 22 looked at before, right? Section --</p> <p>23 A. Right.</p> <p>24 Q. -- 1881A, correct?</p> <p>25 A. Uh-huh.</p>
<p style="text-align: right;">Page 94</p> <p>1 that indicated to you that CARD was submitting 2 patients for Medicare benefits who CARD knew were 3 not sick due to an exposure to asbestos-related 4 disease?</p> <p>5 A. I'm not aware of anything. Nothing -- 6 nothing from CARD.</p> <p>7 Q. And in terms of any communications from 8 Medicare or the Social Security Administration -- I 9 know you know where I'm going, but I'll ask the 10 question.</p> <p>11 Have you ever seen any communication from 12 the Social Security Administration that indicated 13 that Social Security was okay giving Medicare 14 benefits to people that CARD and everyone else knew 15 were not sick with asbestos-related disease?</p> <p>16 A. No, I've never seen anything like that.</p> <p>17 Q. And it is not your testimony here today 18 that it is okay for somebody without an 19 asbestos-related disease to get lifetime Medicare 20 benefits unless they've been exposed to Libby 21 asbestos and are actually sick with asbestos-related 22 disease due to that exposure, correct?</p> <p>23 A. Correct.</p> <p>24 MR. DUERK: Sir, thank you for your time today. I 25 have no further questions at this point.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. And under Section 1881A, is a B Reader 2 interpretation of asbestosis, pleural thickening, or 3 pleural plaques is established by a B Reader, is 4 that a diagnosis under the Act?</p> <p>5 MR. DUERK: Objection, foundation, form, 6 nondisclosure, also calls for a legal interpretation. 7 Go ahead.</p> <p>8 THE WITNESS: It's not -- it's technically not a 9 diagnosis, but it's sufficient for coverage.</p> <p>10 Q. (By Mr. Bechtold) And you wrote the Act, 11 right?</p> <p>12 A. Yes.</p> <p>13 Q. And that was your intention?</p> <p>14 A. Yes. B Reader's positive -- a positive 15 determination is sufficient.</p> <p>16 MR. BECHTOLD: Nothing further. Thank you.</p> <p>17 VIDEO OPERATOR: That concludes this deposition. The 18 time is 12:42 p.m.</p> <p>19</p> <p>20 (Whereupon, the deposition concluded at 21 12:42 p.m. for the day)</p> <p>22</p> <p>23 (Signature waived)</p> <p>24</p> <p>25</p>

Page 97

1 C E R T I F I C A T E
2

3 STATE OF MONTANA)
4 :ss
5 COUNTY OF BEAVERHEAD)

6 I, Robyn Ori English, Freelance Court Reporter and
7 Notary Public for the State of Montana, residing in
Dillon, do hereby certify:

8 That I was duly authorized to and did swear in the
9 witness and report the deposition of Max Baucus,
in the above-entitled cause; that the foregoing pages of
this deposition constitute a true and accurate
transcription of my stenotype notes of the testimony of
said witness, all done to the best of my skill and
ability; that the reading and signing of the deposition by
the witness has been expressly waived.

12 I further certify that I am not an attorney nor
13 counsel of any of the parties, nor a relative or employee
of any attorney or counsel connected with the action, nor
financially interested in the action.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
affixed by notarial seal on this, the 5th day of June,
2023.

17
18
19
20
21
22
23
24
25

\$	84:2;94:21 Adam (2) 5:14;31:7 adamant (1) 9:6 addition (2) 88:25;89:18 adhered (1) 42:12 administer (1) 5:18 administration (20) 10:8;39:12,15,20,21; 41:23;42:19;55:5,10, 20;56:17,22;57:1,10; 77:7;91:13,17;92:17; 94:8,12 administrations (1) 10:6 Administrator (1) 89:4 admit (1) 88:17 admitted (4) 28:7,9;49:12,24 affected (4) 12:7;89:3,10,21 affirmative (1) 54:15 afford (1) 25:25 Affordable (42) 7:20,22;9:22;10:11, 12:11;20:13:24; 14:12,15,25;15:2,11, 22,22;16:1,7,16,17; 17:13,19,19;18:5,10, 11;19:2;20:23;21:2; 22:18;27:6;29:19;30:3; 39:6,13;42:20;45:13, 23:46;25;47:7;52:8,14, 14;53:5,8;58:7,10; 73:7,9,11,18;76:11; 77:24;79:23;80:24; 83:1;87:1;89:1;91:7; 95:21;96:4,10 Action (3) 5:3;9:21;63:8 active (1) 9:6 actual (1) 10:3 actually (5) 10:21;22:13;28:8;	26:5,19;27:16;30:19; 50:16;56:13;67:17; 80:3;96:7 alerted (2) 42:17;43:2 allegations (1) 83:5 alleged (1) 85:10 allots (1) 89:19 allow (4) 20:1;22:20;23:16; 44:12 allowing (1) 23:6 allows (2) 22:16;89:17 alone (3) 28:1;34:16;92:13 along (1) 41:19 Although (1) 70:8 always (2) 24:10;70:1 Ambassador (2) 6:11;7:5 amended (1) 83:4 amendments (5) 15:21;16:15;17:18; 18:10;52:13 America (1) 7:5 American (3) 49:8;60:10;61:4 Americans (2) 8:4,4 amphibole (3) 44:15;45:8;59:6 anchor (1) 50:9 anesthesiologist (2) 64:3,4 annex (1) 8:22 announcement (1) 89:5 answered (1) 79:8 anticipate (1) 51:12 anticipation (2) 31:14;33:1 anymore (1) 61:25 anyways (1) 56:12 apart (1) 36:4 apologize (1) 84:17	assuming (3) 45:1;62:21;72:7 assumptions (1) 82:8 assure (1) 19:23 ATSDR (1) 26:25 attention (11) 10:15;13:8;18:15; 21:3;22:7;24:19;26:12; 28:6,11,19;29:12 attorneys (1) 5:11 authorities (1) 22:21 authority (1) 25:13 aware (33) 18:21;24:10;26:20, 22:27:2,4,9,23;35:1,6; 38:21;42:24;56:1; 60:11,15,16;61:7,20; 62:25;64:6,19,21;65:4, 14,16;68:19;83:17,18; 84:25;93:14,18,24; 94:5 awful (1) 8:25
B			back (25) 7:1;17:10;31:1; 46:17;47:4;51:3,25; 56:8;65:5,12;70:20,25; 72:5;75:11;76:1;80:1, 8,12,16;81:6;82:15; 86:1;87:6;19;92:6 bad (3) 22:9;24:17,17 based (13) 17:15;18:7;30:2; 34:15;49:16,16,18; 52:10;58:5;77:23; 79:22;92:12,25 basic (1) 11:11 basically (5) 11:19;13:25;23:4; 44:24;93:6 basis (4) 33:4;50:23;61:23; 72:14 Baucus (14) 5:2,24;6:9,11,11,12; 13:11;31:7;64:13; 81:10;86:3,17,23;87:7 B-A-U-C-U-S (1) 6:9 bears (1) 21:24 became (1)

19:16 BECHTOLD (40) 5:15,15;6:5;17:4; 20:12,22;24:1,8;25:3, 21:26:5,20;27:18;28:5, 8,10;30:10,13,16; 31:17;32:2,8;36:1; 38:2;43:20;51:23;52:1; 55:1;62:2;65:15;69:3; 71:3;72:18;73:20; 76:21;77:14;95:2,6; 96:10,16 begin (1) 31:13 beginning (1) 88:19 behind (3) 29:19;71:16;87:20 Beijing (1) 41:13 believes (1) 65:7 Benefield (1) 9:5 benefit (1) 85:1 benefits (41) 15:21;16:15;17:18, 24:18;9:27;25;29:20; 43:6,11;44:3,13,20; 45:6,23;47:8,9;48:5; 52:13;54:4;57:3;58:12; 59:7;66:15;67:9;68:10, 17:70:3;71:2;72:12; 78:1;79:24;81:12;82:4; 83:22;84:5;85:3;91:20; 93:1;94:2,14,20 benefitting (1) 84:21 best (7) 38:14;55:11,15,19; 57:24;59:23;91:15 better (2) 51:14,16 bill (11) 10:1;11:10,12,22,23; 22:20;88:23;89:13,14, 25:95:17 binder (1) 86:5 bit (2) 29:1;47:22 Black (14) 33:14;35:3;40:6,7, 11,15,21;41:18;55:14; 60:11,17;61:10,14,19 Black's (1) 61:13 BNSF (2) 5:4,14 book (1) 95:8 both (3)	43:8;81:21,22 bottom (8) 10:17;21:14;26:22; 86:16;87:13,15;88:8; 90:17 bought (1) 91:18 Boy (1) 21:22 Bozeman (1) 5:7 break (4) 30:19;75:20,20; 85:20 bring (2) 9:11,19 broad (2) 26:9,10	18,22;26:1;29:19;30:3; 39:6,13;42:20;45:13, 23:46;25;47:7;52:8,14; 53:5,8;58:7;10;73:7; 77:24;79:23;80:23; 87:1;88:23;89:1,2,9,13, 24:90;3:91:7 carry (1) 17:8 case (29) 11:8;14:6;23:17; 30:8;34:18,23;35:2,7; 36:11;37:13,23,24; 38:6,19,19;40:13; 42:25;61:21;62:6;71:4; 82:10;83:1,9,11,11; 84:12;85:7,11;86:5 cases (3) 68:20;78:3,5 category (1) 84:2 cause (3) 62:9;68:15;69:6 causes (2) 60:24;61:7 Center (3) 14:13;15:1;62:12 ceremony (1) 41:16 certainly (2) 27:3;42:15 certified (2) 61:16,21 chance (1) 21:20 changes (2) 73:7,8 checklist (3) 25:14,16;27:25 chest (19) 12:18,20;15:6,14; 16:10;17:15;18:8;19:5, 6,17;52:11;60:19;61:5; 69:19,23;72:4;76:25; 77:18;79:17 China (2) 7:5,5 Christine (1) 57:23 chronic (1) 82:2 cigarettes (1) 64:24 Civil (1) 5:3 claim (7) 49:6;55:13,18;56:3; 57:11;60:7;82:4 claims (2) 67:1;82:25 clear (1) 51:12 clearly (3)	11:22;25:20;34:5 clinic (25) 5:16;23:14,18;30:6; 39:25;40:1,2,23;54:14; 55:15;56:16,21;68:6,7, 13;69:16,22;70:18,19, 21;74:17,18;76:5,5; 83:5 clinical (4) 18:22;19:8;20:17; 26:24 clinician (1) 45:5 Clip (7) 46:9;58:21,23;59:11, 13;67:18,24 clips (1) 46:20 closed (1) 91:1 closely (1) 14:9 CMS (3) 55:8,9,9 commitment (2) 22:16,22 common (2) 75:8,9 communicate (1) 74:4 communicated (1) 40:8 communication (13) 39:11,14,18,20,24; 40:2,17;41:20;57:4; 93:14,23,25;94:11 communications (3) 57:15;93:18;94:7 community-wide (1) 86:25 companies (2) 6:18,19 competent (1) 66:10 complaint (3) 34:10;83:3,4 completed (2) 77:19;79:17 complicated (4) 47:15,16;81:8;82:8 computed (5) 12:19;15:5,13;16:10; 19:5 concept (1) 76:19 concepts (2) 76:10;77:3 concern (7) 62:9,20;68:16;69:6; 70:3;71:2;83:7 concerned (1) 43:10 concerning (1)	84:9 concluded (1) 96:20 concludes (1) 96:17 condition (3) 53:21;68:15;91:12 conditions (8) 12:11,12,14;13:1,2; 53:15,24,24 conduct (1) 85:11 confusion (1) 25:15 Congress (6) 7:9,15;11:8;20:22; 21:1;24:9 congressional (8) 6:25;11:1,6;21:10; 38:25;39:4;73:1,6 considered (3) 69:1;81:21;89:8 consistent (6) 72:9;80:18,22;91:5, 8,10 constitute (2) 62:18,19 constituted (1) 59:21 consult (1) 6:18 contact (1) 90:11 contamination (1) 22:14 context (1) 79:14 continue (3) 36:15;84:23;85:4 contracts (2) 61:24;62:12 conversation (8) 31:18,21;32:1,7; 33:14,15;40:20;92:6 conversations (6) 33:16;40:22;41:17; 42:18;74:2,7 COPD (1) 64:23 copies (1) 34:10 copy (3) 36:23;53:6;88:13 corner (3) 10:18,26:6;36:17 correctly (10) 37:4,20;50:6,7; 52:15;53:16;72:16; 80:6;90:20;91:2 correspondence (2) 68:6,12 cost (1) 8:8
---	---	--	--	---

costs (2) 8:8;88:24	10:7;13:11,13,16,20, 21:14;5,8;17:11;20:13;	detected (2) 70:11,11	directly (1) 53:23	doctor's (1) 79:5
country (2) 22:2;24:15	27:19;28:13,17;29:1,4; 32:15;33:20;34:6,7,8;	detection (1) 21:20	disadvantage (1) 22:14	document (3) 17:5;24:23;26:15
couple (5) 6:23;7:23;47:13; 76:10;95:2	38:13;52:3,17,24; 82:17;84:12	determination (7) 20:4;35:18;43:14; 54:15;67:16;79:5; 96:15	disagree (5) 49:15;50:1;57:7; 66:6,8	documents (3) 34:11;38:2,21
course (1) 71:9	13:23	determine (4) 46:5;63:21;69:16; 73:12	disclosure (7) 19:10;20:19;23:9; 24:5;25:1,19;38:5	done (4) 63:10;78:17;80:2; 84:20
Court (6) 5:2,7,9,17;6:7;36:1	9:24;35:1,7;89:6	determined (7) 12:21;14:25;16:8; 19:7;23:13;65:17; 89:15	discussed (1) 66:19	down (4) 54:8;74:10;79:5; 86:16
cover (3) 69:13;70:7,7	40:24;41:16	determines (1) 65:18	disease (90) 9:24;14:3,13;15:2; 19:14,17,19;21:21;	Dr (24) 33:14;35:3;40:6,7, 11,15,21;41:18;55:14;
coverage (16) 8:3;9:23;10:2;20:9; 24:25;26:9;29:23; 45:21;65:19;24;88:25; 90:8,24;91:13,17;96:9	80:25	diagnose (14) 14:15;15:3,11;16:8; 17:23;20:7;27:12; 49:14;50:1,17;52:9,18, 22:53:1	23:11,15,22;27:10,13; 28:2;30:5,7;42:21; 43:6,12,16,24;45:19, 19,25;47:25;48:2,10, 13;49:8;50:18,19;	60:11,17;61:10,13,14, 19;62:5,6;74:8,12,16, 18;75:4,5
covered (14) 12:10;13:6;14:4; 19:14,20,21;23:11,16; 47:1,2;50:5;89:20; 90:8,9	61:10	diagnosed (20) 9:23;12:10;13:1; 15:18;16:13;17:16;	53:20;57:2;58:2;59:5; 60:7,13,18,20;61:6,12; 62:13,20;65:8,23;	draft (3) 14:11;33:19;57:25
create (1) 25:3	defined (1) 12:8	18:6;29:24;30:4,7; 43:5;45:20,20;52:12;	66:14,16;67:3;68:9,22; 69:2,17;70:1,10,22,24;	drafted (1) 29:4
created (2) 25:9,14	definition (1) 54:9	53:14;76:13;79:1; 90:22;92:2,19	72:6,10,15,22;73:24; 74:5;75:4;76:13;77:23;	drafting (4) 7:10,15,19;30:3
creates (1) 58:10	depends (1) 79:3	diagnoses (7) 18:22;19:8,24;20:17; 23:7;27:20;45:4	78:20;79:21;80:5; 81:14,24;82:2,3;83:10,	draw (9) 10:15;13:7;18:14; 21:3;26:11;28:5,10,19;
cross-examination (2) 30:14;31:4	deposed (2) 34:25;51:10	diagnosing (8) 27:5;50:18;60:1; 76:16;77:17,21;79:16,	19,20;84:4;89:3,16,22; 90:3,10,22,25;92:2,19;	29:12
CT (13) 12:20;19:25;23:21; 60:19;61:5;63:22; 69:20,22;72:1;76:24; 77:18;78:15;79:16	deposition (53) 5:10;28:12,14,20; 31:8,15,16,24;32:5,10, 12,15,18,24;33:1,2,4,8, 12,14,20,24;34:14; 35:5,23,24;36:12,24; 37:25;39:4,16;41:4; 43:9;46:3,20;47:13; 48:16,23;51:22;54:6; 57:15;58:16;66:2,20;	19 diagnosis (62) 12:25;17:14;19:3; 20:5,15;23:13,25;24:2; 26:24;42:20;43:12; 45:3,24;46:1;47:1,2,24, 24:48;2,9,12;49:7; 50:3;52:19;53:2,20; 54:5,9,13,14,17,23; 57:2,18;58:12,14;59:4, 22:60;6,8,13,18,23; 61:5,6,12,23;62:11,18, 19;67:2;68:8,21;69:1, 17;76:18;77:10;79:2; 80:24;81:1;96:4,9	93:4;94:4,15,19,22	due (11) 21:18;44:3,14,18; 45:7;90:24;93:3,9,21; 94:3,22
current (4) 6:16;34:19;63:8; 70:23	depositions (1) 34:11	disabilities (5) 8:12,17;9:3;27:6; 29:25	Duerk (45) 5:14,14;17:2;19:9;	
cut (1) 8:7	Describe (1) 48:6	dispute (1) 50:11	20:10,18;23:8;24:4;	
	described (12) 12:11,12,15;13:1,2; 53:7,9,12,13,15,24; 81:17	disputed (1) 75:10	25:1,18;26:4,18;27:15;	
	describing (1) 57:21	disrespectful (1) 84:18	28:3,7;30:13,19;31:6, 7;38:10;43:21;46:19;	
	designation (4) 10:3,4,8;59:10	District (2) 5:2,3	52:2;55:2;58:2;1,59:1, 16;62:4;65:20;68:2;	
	designed (1) 25:13	districts (1) 7:1	69:5;71:7;73:22;75:19;	
	details (1) 90:10	Docket (1) 26:21	76:3,22;77:15;85:20;	
		Doctor (41) 16:20;18:17;19:20, 21:23;19,21;64:1,2,2,3,	86:3,11;88:4,17,18;	
		4,5,12;65:1,11;66:25;	94:24;96:5	
		67:6;69:11;70:10;	duty (1) 5:25	
		71:22,25;72:11;74:18;	during (18) 7:9;32:5,24;33:8,12;	
		76:8;77:9,16,18,19,20, 21;78:9,14,16,18,24;	35:5;41:21;43:8;46:20;	
		79:5,15,16,17,18;92:7	48:16;50:21;54:6;	
		doctors (15) 18:19;22:4,7,25;	58:15;59:19;66:2,20;	
		23:20;24:10,11,16;	69:17;70:22	
		72:20;73:1;74:4,8;	dying (1) 9:2	
		75:15;76:6;78:25		

early (4) 6:24;21:20;24:18; 70:11	enough (2) 23:16;63:2	11:14;84:13	far (1) 26:6	82:4;96:5
easier (2) 47:22;58:5	enroll (3) 89:17;90:3,11	expect (1) 45:6	February (1) 13:14	forms (7) 26:23;34:11;55:13, 14,18;56:3;57:11
East (1) 5:6	enrolled (1) 76:9	expensive (1) 8:9	federal (2) 35:15;90:4	forth (4) 42:1;56:9;87:7;92:6
economic (1) 21:19	ensure (3) 14:12;18:5;89:21	experience (3) 71:23;72:3;76:4	fella (1) 9:4	found (6) 24:15;65:1;68:14; 69:18;70:22;87:21
editorial (1) 21:22	ensuring (1) 42:11	experienced (1) 22:5	field (4) 55:10,20,24;56:17	foundation (13) 17:2;19:9;20:18; 23:8;24:4;25:2,18; 60:1;65:15;71:3;76:21; 77:14;96:5
educate (1) 24:16	environmental (6) 12:7;26;23;27:24; 45:14;46:24;47:6	expert (10) 19:10;35:1,7,10,15; 38:24;51:2;62:7;80:8; 82:12	Fifteen (1) 31:22	fracture (2) 66:25;67:7
effect (1) 65:19	EPA (3) 22:9;89:4,8	experts (1) 72:8	fifth (1) 11:16	fractured (4) 66:4,5,13,23
effects (1) 22:13	equals (2) 52:18;53:2	explained (1) 9:10	filled (1) 55:14	fractured-rib (1) 66:19
EHH (5) 34:11;39:13;55:14; 57:10;80:23	equipped (1) 37:17	explains (1) 36:22	film (2) 49:14,25	frame (2) 41:21;69:18
either (11) 27:19;30:6,8;45:20; 58:3;60:19;63:19; 69:19;72:2;79:1;87:14	especially (1) 35:16	exposed (5) 29:21;44:9;47:8; 60:22;94:20	films (3) 64:9;72:4,4	frankly (3) 10:5,11;22:9
eligible (17) 15:20;16:15;17:17, 23:18:9;43:22;44:8; 45:22;52:12;57:3,17; 58:1,11;80:25;92:12; 93:10,20	Essentially (2) 22:11;34:14	exposure (15) 12:7;44:3,10,14,18; 45:7;60:21;61:5;77:20; 78:16;79:19;93:9,21; 94:3,22	finally (3) 10:7,14;22:7	fraud (13) 67:11,15;81:18,24; 82:5;83:11;84:21,23, 24:85:2,5,7,12
else (9) 5:12;23:19;31:23; 32:12;40:8;50:25; 68:22;91:16;94:14	establish (1) 60:13	exposure' (1) 91:1	find (15) 19:21;23:14;27:11; 28:1;36:16;43:14;64:7;	fraudulent (3) 67:10;81:20;85:10
e-mail (5) 86:14,20,21;87:8; 91:25	established (4) 12:17;19:3;92:18; 96:3	express (7) 16:5,5,11,11;18:3,4; 38:12	finally (3) 10:7,14;22:7	free (1) 90:11
e-mails (7) 43:3;56:8,14,16,20; 88:5,10	even (5) 19:23;20:6;27:6,11; 70:9	eye (1) 9:13	findings (1) 60:25	Friends (1) 88:13
emergency (4) 9:25;10:3;89:5,9	everybody (2) 19:19;23:11		finds (6) 17:25;19:25;20:7; 23:21;30:8;59:9	front (3) 38:2;95:9,12
emerges (1) 22:20	everyone (2) 57:25;94:14		finger (1) 9:14	fulfill (2) 22:16,22
emphysema (3) 64:23;65:2,13	evidence (6) 28:7;62:2;72:7;85:7, 10,16		first (8) 5:25;13:8,22;87:5; 89:7;90:19;91:2;92:18	funded (1) 90:5
employee (1) 42:25	exact (1) 45:17		Fisher (1) 5:8	funding (3) 17:1;89:14;95:18
employees (1) 60:12	exactly (1) 26:3		five (1) 21:14	funds (1) 89:19
enable (1) 16:7	EXAMINATION (3) 6:3;63:3;95:4		FLASH (1) 90:4	further (2) 94:25;96:16
enacted (5) 15:22;16:16;17:19; 18:10;52:14	examined (2) 6:1;75:15		floor (1) 39:9	future (1) 22:19
enforce (1) 42:7	except (1) 34:5		following (2) 5:20;12:14	G
enforced (1) 42:5	exception (1) 58:11		follows (1) 6:1	gave (2) 73:13;75:3
enforcement (2) 55:3,4	exceptions (1) 59:7		follow-up (1) 30:16	Gayla (1) 9:5
English (1) 5:8	exclusive (1) 53:22		follow-ups (1) 95:2	Gayla's (1) 9:8
	excuse (2) 7:3;88:22		False (1) 82:25	general (2) 12:9;53:12
	Exhibit (23) 10:16,17;11:14,17, 18:13;8,10;16:21;21:4;		familiar (2) 7:14;10:10	Generally (4) 7:21;37:10;78:2; 92:21
	24:20;26:12;28:6,11; 52:4;86:4,8,12;87:6, 24:88:1,17;90:18;95:7		form (5) 25:4;27:15;65:6;	gets (1)
	exhibits (2)			

58:14 given (1) 73:6 giving (4) 28:13,14;63:2;94:13 goal (1) 8:7 god (1) 11:23 goes (2) 36:19;69:15 good (4) 7:16;20:25;74:21; 91:14 govern (1) 25:17 Grace (1) 89:22 grant (2) 26:25;90:5 greater (1) 8:3 grounds (1) 17:2 group (1) 9:9 guess (7) 10:20;12:20;16:25; 36:25;38:15;55:22; 58:18 guidelines (1) 61:4 guy (1) 74:10 guys (2) 8:24;44:24 gym (2) 83:21;84:6	healthcare (7) 7:24;8:8;9:25;10:3; 89:25;90:5;92:7 hear (1) 45:17 heard (4) 43:18;62:4;83:23,24 Heather (1) 42:25 Heaven (1) 22:18 heck (1) 61:2 held (1) 49:1 help (12) 7:25;8:7,16,19,20; 9:15;26:7,8;29:4; 36:20;83:6;92:22 helpful (2) 83:14;88:20 helping (2) 11:2;19:15 helps (1) 22:15 herein (1) 5:25 Here's (3) 36:21;56:15;92:23 Hernandez (2) 86:14;87:9 HHS (5) 10:9;16:25;25:7,8,12 Hilman (1) 42:25 historically (1) 21:18 history (10) 6:21;39:1,5;60:21; 61:5;64:23;77:2,20; 78:17;79:19 Hold (2) 36:3;48:25 Holm (4) 74:13,14,18;75:5 honored (1) 40:18 Hope (1) 76:7 hoping (1) 86:20 hours (1) 32:18 Human (2) 14:10;90:6 hundred (1) 8:15 hypothetical (14) 66:3,20;69:12,15,21; 70:13,21;71:5,8,11,12, 21;79:14;81:22 hypotheticals (4) 47:14,18,22;71:6	' I (1) 90:24 I	irrespective (1) 65:2 isolated (1) 21:18 issue (3) 8:14,15;63:12 J
			Jackson (1) 89:4 job (2) 57:11;63:8 joined (1) 89:4 judgment (1) 8:19 July (20) 28:14,17;31:11; 32:11;33:1,6;35:10,25; 36:24;43:9;46:20; 50:22;51:10,22;58:16; 59:2,17,19;66:20; 69:12 June (1) 89:4 jury (9) 6:21;7:18;10:23; 11:17;12:6;46:10; 58:24;59:14;67:25 jury's (1) 63:8 justice (5) 8:16;9:7,11,19;21:1
			K
			Kalispell (3) 55:10,21;90:12 Kanne (1) 62:5 Kathleen (2) 14:9;57:23 kind (3) 22:5;34:12;69:12 kinds (1) 24:14 knew (8) 34:6;44:17;75:9; 81:12,23;82:3;94:2,14 knowing (2) 45:2;67:1 knowingly (1) 81:11 knowledge (8) 38:14;55:11,16,19; 57:24;75:8,9;91:15
			L
			lack (1) 22:11 lady (1)

9:6	11:84;20,21;85:1;87:2; language (11) 7:19;14:11,15,17,19; 15:2;16:6;18:4;22:15; 53:4;91:10	love (1) 40:19	16:20;23:13;24:13; 26:3,6;28:14;42:8;	miss (1) 19:20
large (2) 54:14,17	lower (1) 95:14	lower (1) 88:24	46:1;61:13;75:9;92:21	missed (5) 23:18,25,25;45:3,5
last (38) 6:7;13:15;26:14; 31:11;32:10,15;33:2,8, 12,20;24;34:9,14,25; 35:5;37:23;38:12,24; 39:3,21;40:3,10,21; 41:4;43:9;46:3;48:16, 18;58:16;59:2,17,19; 66:2,20;68:3;69:14; 81:4;87:8	Libby/Troy (1) 89:6	lung (1) 22:1	meaningful (1) 37:5	Misstates (5) 43:20;51:23;52:1; 62:2;69:3
lasted (1) 32:18	Libby's (1) 21:18	Lynch (1) 62:6	meant (1) 23:11	mistake (1) 67:12
later (1) 70:12	life (4) 6:23;48:5;68:10; 84:5		meantime (1) 90:2	money (1) 26:25
law (17) 11:7;42:1,4,6,7,9,9, 12,53:18,19;54:3,20, 21,22;55:4,4;89:25	lifetime (7) 44:13,20;45:6;66:15; 67:8;82:4;94:19		medical (15) 18:17;21:13,17;49:3;	Montana (15) 5:3,7;6:25;7:2,17; 9:12;14:3,14;26:7; 55:11,21;71:24;87:2; 89:23;91:1
laws (2) 7:10,15	likewise (1) 33:12	mailer (2) 86:25;90:14	61:11;77:2;82:20,23; 89:2,9,20;90:2,22;92:3,	Montanans (1) 88:25
lawsuit (1) 34:19	limited (1) 21:18	mailing (13) 86:17,23;87:7,13,14, 15;88:5,13,19;91:5,25;	20	months (1) 40:12
leading (1) 27:15	line (12) 28:22;29:12;36:9,14, 15;48:23;49:22;71:18, 20;79:12;80:17,20	mailing's (1) 92:23	Medicare (77) 9:23;14:4;15:21;	more (26) 12:10;13:2;24:14;
learned (3) 61:22;62:10;84:13	lines (2) 37:3;79:10	Main (4) 5:6;8:2;20:3;92:21	16:15;17:17,24;18:9;	30:11;41:5,7;49:17;
least (2) 53:18;91:24	lists (1) 11:20	major (1) 9:21	20:8;23:16;27:21,25;	51:7,8,15;53:14;60:14;
left (1) 61:23	little (2) 28:25;47:22	makes (1) 77:10	29:20,23;43:6,11,22;	62:15,22,24;69:7;80:8,
left-hand (1) 36:17	living (1) 9:8	making (3) 9:7;45:1;84:10	44:2,8,13,20;45:6,22;	9,11;81:8,16,16;82:11, 13,18;84:9
legal (3) 35:17;67:16;96:6	loaded (2) 44:22,25	manual (2) 56:6;77:7	47:8,9;48:5,14;52:13;	Moreover (1) 15:18
legislation (3) 42:1,5;57:25	location (1) 21:19	many (9) 7:10,12,13;8:13,14; 9:15;10:12;45:18;82:8	54:4;55:6,7,13,18;	morning (1) 32:11
legislative (2) 39:1,5	long (11) 10:2;14:4;21:25; 22:6;31:21;32:22,23; 47:15,16;61:1;78:7	mark (3) 86:4;87:18,24	56:2;57:3,10,17;58:1,5,	most (8) 6:22;7:17;70:23;
Legislature (1) 6:23	longer (2) 16:4;42:6	marked (4) 36:18;52:4;86:8; 88:1	12;59:7;65:24;66:15,	77:9,16;78:10,14;
Les (5) 9:4,5,9,10,10	look (24) 10:17;11:25;14:7; 16:21;17:10;21:12; 23:20;26:21;35:19;	material (3) 32:4;92:25;93:2	25:67:9;68:10,17;70:3;	79:15
letter (1) 95:13	49:13,25;59:11;63:8,9, 10;64:9;71:13;79:7,10; 86:4,12;87:5;90:17; 95:7	materials (4) 32:8,25;33:24;34:2	71:2;72:11;76:9,14;	move (4) 20:10,19;29:9;88:17
Libby (76) 7:20;8:12,13,13,16, 17,19,19,22;9:2,7,12, 15,20,24;10:1;11:2,12; 13:6;14:3,14;19:13,13, 15:21;1,13,17;22:2,6,8, 12,17,19;26:3;29:21; 44:2,9,10,14,18;45:8, 13;47:9;58:1;59:6; 71:23,24;72:21,22; 73:2,24;74:5;75:2,4; 78:3,3,5,11,12;83:6,9,	looked (5) 9:13;72:25;75:15; 85:16;95:22	matter (2) 37:16;82:12	9:12;15:13;17:20;	moving (1) 41:19
looking (12) 10:24;35:20;48:23; 49:22;52:3,4;53:6,7; 64:15;71:17,17;87:8	Max (19) 5:2,24;6:9,12,13,14, 16:7;9:10;15:11;13; 13:7,11;17:5;18:14; 22:24;24:19;26:11; 28:5;30:10	May (14) 5:5;17:13;19:20; 20:14;27:20;30:13;	9:15	much (2) 7:24;25:25
looks (5) 10:25;74:1;77:1; 90:15,16	49:17;52:9,18,22;53:1; 64:22;65:12;67:11	Mayo (6) 70:17,19,19,21;76:5, 5	53:8	multiple (1) 72:6
lot (9) 7:21;8:4,13,20,21; 9:1;19:16;24:13;74:21	maybe (5) 8:14;25:7;40:12; 41:5;67:12	MD (5) 61:16;64:2,3,3,4	might (5) 74:10;78:22,23;	multi-year (1) 69:25
lots (1) 75:9	mean (11)	mean (11)	85:20;87:19	must (8) 35:10;37:8;38:20;
				45:24;53:19;54:4,22;
				57:17
				myself (3) 9:17;58:13;82:15
				N
				name (5) 6:6,7,7;74:13,15
				named (1) 9:4
				narrow (1) 79:4
				narrower (1) 50:8
				Nate (1)

5:8 national (1) 9:25 near (1) 88:15 necessarily (3) 42:6;72:20;73:24 need (6) 26:7;60:21;62:22; 84:9;89:24;90:2 needed (1) 21:1 needs (4) 60:19;23;76:23; 92:18 negative (3) 63:22;70:1;72:5 nevertheless (1) 83:21 new (4) 50:13,14;86:25;89:2 next (1) 87:18 NIOSH (3) 61:16;21;62:7 Nobody (1) 75:10 nondisclosure (3) 26:18;27:15;96:6 none (2) 22:4;56:12 non-related (1) 67:7 nonresponsive (1) 26:4 Nope (2) 17:6;41:24 nor (3) 48:25;62:18;68:25 note (3) 64:15;75:19;92:11 notes (2) 87:13,15 nothing's (1) 28:9 Notice (2) 5:11;92:23 Nowhere (1) 92:10 number (6) 7:12,16;36:16;86:15; 92:15,24 numbers (1) 10:18	17:2 Objection (10) 19:9;23:8;24:4;25:1, 18:26;4,18;27:15;28:3; 96:5 objections (2) 20:10,18 obstructive (1) 82:2 occupation (1) 6:16 occur (1) 31:19 occurred (1) 85:13 off (6) 8:24;30:21;46:12,15; 75:22;85:22 offer (2) 37:16;55:2 offered (2) 34:20;35:14 office (9) 43:3;55:10,20,24; 56:17;90:11;93:1,8,19 often (2) 70:9,10 once (4) 31:8;42:5;62:6;72:6 one (22) 8:2,20;9:3;12:10,15, 25:13:1;19:20;30:3; 32:1;53:14,21;57:14; 76:16;79:5,5;83:17; 85:12;87:4,19;88:10; 95:12 One's (1) 20:5 only (8) 23:13;36:19;38:12; 49:13,17,25;70:18; 79:6 onto (1) 29:16 Ooh (1) 16:4 oops (1) 87:19 Operation (2) 77:7;89:23 operations (1) 56:5 OPERATOR (12) 5:1,8,17;30:21;31:1; 46:12,17;75:22;76:1; 85:22;86:1;96:17 opinion (1) 19:10 opinions (5) 34:20;37:16;38:12, 24:82:12 opportunity (1) 34:1	order (11) 37:5,16;43:22;44:8; 45:22;54:3;57:2,16; 60:12,17;93:2 Ori (1) 5:7 original (2) 80:18,22 others (1) 65:3 out (13) 8:21;48:25;49:1; 55:14;60:24;61:7; 64:14;72:1;85:21; 86:25;88:14;91:6; 92:23 outline (2) 6:20;11:19 outlines (3) 11:10,11,21 outside (18) 23:6;40:15;62:7; 68:24;72:7,8,19,19,20; 73:1,23;74:3,4,8,19; 75:1,6,13 over (4) 8:14;11:23;68:19; 69:25 over-read (1) 61:17 oversight (1) 67:13 Overview (1) 16:24 own (3) 62:21;63:2;68:7	10:11;13:22;26:6; 36:11;39:8,9 particular (2) 9:3;83:17 parts (3) 10:12;11:3;24:15 pass (1) 11:7 passage (7) 7:15;14:24;17:12; 52:7;73:17;88:23;91:7 passed (5) 10:14;21:2;22:17; 25:12;42:5 passing (6) 7:11;15:25;25:22,25; 42:1,9 past (2) 44:23;81:18 patient (67) 20:1;23:21;44:8,17, 19:45:5,7;47:23,24,25; 48:8,9,12,13;54:4; 57:17;58:11;59:4,5; 60:19,23;64:9;65:7,23; 66:3,12,14,19;68:8,9, 13,16,16,20,20,22; 69:15,18,21,25;70:2, 14,17,18;71:1,22,23; 72:11;76:18;77:10,17, 21,22,25;78:19,20; 79:19,24;80:4,24; 81:11,13;82:1;83:17; 84:1;89:1;92:19 patients (20) 26:23;43:5,10;44:12; 57:1;66:24;67:1,2,6; 68:7;75:16;76:9;82:25; 83:16;84:15;91:12,21; 92:1;93:9;94:2 patient's (2) 70:25;72:1 Pause (2) 38:8;69:9 people (39) 8:11;9:2,7,12,15,19, 23:10:1;11:2;13:6,18; 14:2;19:15;20:25; 22:17;23:24;26:3,6; 27:10;29:20;47:8,10; 75:9;83:6,9,11;84:7,20, 21:85:2;87:10;89:3,10, 21:90:2;91:6;92:22; 94:14;95:13 performs (1) 77:1 perhaps (2) 41:10;75:5 period (2) 69:25;71:25 permanent (1) 89:18 pernicious (2)	22:5;24:14 perpetrated (1) 84:22 person (14) 12:24;19:13,20; 23:16;43:15,23;48:4,6, 7;50:4;70:8;89:15,17; 93:3 personally (3) 27:2;74:24,25 personnel (2) 55:24;56:17 person's (2) 12:10;45:19 physician (19) 12:18,21;19:4,7; 49:1;61:13;64:7;65:12; 74:19;75:5;76:15,16; 77:16,17,21;79:16,20; 81:12,23 physicians (24) 14:12;15:1,10,19; 16:7,13;17:13,17;18:6; 20:14;27:6;48:18; 49:12,23;52:9,12; 61:17;64:14;73:23; 74:3;75:2,7;76:4,5 physicians' (1) 27:20 picked (2) 23:19;24:17 piece (1) 21:24 pilot (1) 89:19 plain (5) 12:18;17:15;18:8; 19:5;52:11 plaques (13) 12:16;14:16;15:4,12, 20:16;9,14;17:15;18:7; 20:16;52:10;53:25; 96:3 play (2) 58:19;67:18 played (5) 46:9,20;58:23;59:13; 67:25 playgrounds (1) 8:21 pleadings (2) 34:10;37:24 please (8) 7:18;28:23;35:20; 36:12;37:3;61:2;67:19; 88:18 pleased (2) 88:21,22 pleural (26) 12:16,16;14:15,16; 15:4,4,12,12,19,20; 16:8,9,14,14;17:14,15; 18:6,7;20:15,16;52:9,
O		page (39) 10:16,21,21;11:16; 21:9,15;24:21;26:14, 15;28:19,20,21,21; 29:10,16;35:20;36:8,9, 13,14,16;37:1,2;48:22; 49:20,22;53:6,9;71:14, 17;79:7,10;80:17,20; 86:12;87:6,11;88:9; 90:18 pages (2) 11:24;36:18 paid (1) 84:6 panel (1) 62:7 paragraph (14) 14:7,21;15:9,17; 16:3;17:11;18:2;20:14; 21:13;52:5,7;53:13; 95:16,20 paragraphs (1) 21:14 part (6)		

10:53:25,25;96:2,3 pm (6) 75:23;76:2;85:23; 86:2;96:18,21 point (13) 19:23;20:3;21:25; 23:4;24:7;34:5;42:14; 45:18;58:17;60:22; 79:3;92:22;94:25 pointed (1) 9:14 points (1) 63:15 policies (1) 56:1 POMS (2) 76:14;77:8 portion (2) 10:25;11:11 posed (1) 47:14 positive (17) 17:25;19:25;20:4,5, 7;23:14;22;30:8;43:14; 59:9;63:21;64:8;22; 65:1;18;96:14,14 possibility (1) 65:14 possible (5) 19:22;26:1,1;27:3; 60:24 possibly (1) 78:22 potential (1) 61:7 practice (3) 61:22;62:11;85:3 precise (1) 83:5 precisely (1) 49:20 prefer (1) 6:10 prepared (1) 13:17 present (2) 5:6,13 presume (1) 88:11 Pretty (1) 20:24 prior (16) 19:9;20:18;23:9; 24:4;25:1,18;31:16; 33:3;24;39:16;40:20; 54:6;57:14;70:20; 81:19;88:5 probably (1) 73:12 problem (1) 73:2 problematic (4) 67:4;72:10;81:15;	84:8 problems (3) 8:11;9:10;67:8 procedure (2) 13:23;25:13 procedures (2) 56:2;76:11 proceedings (1) 5:20 process (2) 51:21;89:11 professionals (1) 61:11 program (9) 56:5;58:5;77:7; 83:22;89:18,19;90:4,5, 7 programs (1) 90:10 proper (5) 66:14;17;77:25; 79:23;81:11 proposition (1) 54:5 Protection (1) 89:1 provide (15) 13:12;25;14:18; 22:22;29:20;23;47:7,9; 62:24;82:18,20,23; 88:24;89:19;90:7 provided (3) 38:24;73:16;85:15 provider (11) 48:11;76:15,16,23, 25;77:4,8;90:22;92:3, 6,20 providers (1) 55:15 provides (2) 89:14;95:18 provision (11) 7:20;9:22;10:1;11:2, 10:22;21;23:5;59:21; 73:9,10,11 provisions (14) 11:11;21;13:24; 39:13;42:19;45:13; 46:25;47:7;55:4;58:6, 9;76:14;80:23;86:25 public (3) 6:22;89:5,8 published (1) 42:2 pulmonary (1) 82:2 pulmonologist (3) 48:11;63:20;72:3 pulmonologists (3) 69:24;72:19;75:14 purpose (9) 14:2;19:14;25:22,24, 24;26:2;47:6;80:18,23	purposes (4) 8:2;12:13;24:1;71:9 pursuant (2) 5:10;25:12 purview (1) 42:7 pushing (1) 89:7 put (11) 7:25;9:25;13:23; 20:24,25;38:2;41:8; 49:11;58:6;73:9,11 putting (2) 11:9;62:22	36:11,12;37:3,4,20; 39:7;42:12;48:1;49:19; 50:6,7;52:15,18;53:2, 10,16;59:21;60:14; 62:11;64:8;22;65:5,17; 66:6;69:23;72:1,16; 77:18;78:15;80:6,12; 88:19;90:19,20;91:2 read] (1) 18:11 reader (35) 12:17;17:13,17;18:5; 19:4,25;20:6,6,7,14; 23:14;30:8;43:14; 45:21;48:1,11;52:8,12; 54:15;59:9;63:16;65:7, 17,18;22;68:14,24; 72:2;79:2,3;81:21,22, 25;96:1,3 Q	30:24;75:25;85:25 recognition (1) 20:16 recognize (3) 16:23;22;25;24:23 recognized (1) 42:12 recollection (5) 51:24;59:23;80:13; 82:16;86:22 Record (26) 11:1,6;21:10;30:21; 31:1;38:25;39:5,7,8,9; 46:12,15,17;53:10; 59:2;73:6,15,23;75:12, 22;76:1;85:17,22;86:1; 87:25;93:16 recording (1) 39:10 records (3) 33:7;82:21,24 REDIRECT (1) 95:4 reducing (1) 21:19 reference (1) 76:15 referenced (1) 88:5 referring (1) 73:15 refine (1) 21:25 reflect (3) 46:21;59:17;68:3 reflects (1) 67:19 reform (3) 88:23;89:13,25 refresh (3) 28:25;29:13;86:21 refreshed (3) 51:24;80:12;82:16 Related (12) 14:13;15:1;19:13; 34:19,20;38:24;42:20; 45:13;67:8;82:21,24; 84:11 relates (1) 17:1 Relator (1) 5:14 relevance (5) 20:19;23:8;24:5; 76:21;77:14 relevant (2) 11:12;47:17 remarks (2) 73:22,25 remember (8) 9:8;33:18;41:17,22; 66:22;72:22;78:7;87:4 rendered (1)
---	--	---	--	---

82:11 rendering (1) 76:18 repeatedly (1) 84:3 repeating (1) 21:24 report (4) 65:12;91:12;92:1,13 Reporter (4) 5:7,17;6:8;36:1 Reporting (1) 5:9 reports (2) 64:17;65:5 represent (5) 5:12;6:18;38:17; 61:3;66:4 represented (3) 6:24;7:2,4 representing (1) 5:15 required (4) 49:7;60:8;61:11; 91:16 requirement (1) 36:10 requires (3) 60:14;61:5;89:16 requisite (1) 71:25 residents (2) 22:23;87:1 respect (1) 63:24 response (1) 46:4 responses (1) 22:3 responsibility (1) 42:14 responsible (1) 50:18 result (1) 20:8 resulted (1) 90:25 returns (1) 69:21 review (6) 17:15;18:7;28:22; 31:14;32:8;52:10 reviewed (12) 32:4,25;33:9;37:24, 25:39;4:14;51:3,6; 70:20;77:20;79:18 reviewing (1) 33:7 rewarding (1) 7:25 rib (5) 66:4,5,13,25;67:7 ribs (1)	66:23 right (83) 6:14;11:15,25;13:19; 16:22;17:8;21:11,11; 29:11,11,15,22;30:11, 18:31;12:32;16:33:11, 24:34;16,23,35:8,11, 14:36;23;37:7;38:17; 41:6;42:11;44:11;46:2, 7:49;10:51;5:52;25; 53:1,3,8;54:10,12; 55:12,12;57:20;59:25; 61:15;62:16;63:7,14, 23:65;4,11,20;66:18, 21:67;5,22;68:5;71:13; 73:3,10;74:23,25; 77:15;81:7,17,25,25; 82:5;84:1,11;85:18; 87:5;88:21;91:22;92:4, 5,8,16,25;95:9,12,22, 23:96:11 right-hand (1) 10:17 Robyn (1) 5:7 role (1) 51:21 room (1) 9:9 ruling (2) 60:24;61:7 running (1) 90:1	Sebelius (4) 10:9;14:9;16:6,12 Sebelius' (2) 14:25;57:23 second (4) 13:23;36:3;95:16,20 secretary (12) 10:9,9;12:21,23; 14:5,10,25;16:6,12; 18:4;19:7;22:21 Section (12) 12:1,3;14:18;39:5; 53:5,9;58:10;89:14; 95:17,21,22;96:1 sections (1) 11:22 secured (1) 90:7 Security (28) 15:22;16:16;17:18; 18:10;39:12,15,19,21; 41:23;42:19;43:3; 52:14;55:5,9,20;56:17, 21,25;57:10;76:11; 77:6;91:13,17;92:1,16; 94:8,12,13 seeing (3) 75:19;78:18;85:10 seem (2) 22:25;84:18 seems (1) 7:12 sees (1) 71:22 self-employed (3) 6:17,19;7:8 Senate (3) 7:3;11:9;39:9 Senator (9) 6:11;9:14;16:20; 31:7;64:13;76:3;81:10; 86:3;88:20 Senators (1) 44:7 send (2) 65:5,12 sending (1) 86:24 sense (1) 76:19 sent (9) 33:19,23;43:3;70:17; 71:25;88:14;91:6; 92:23;93:19 sentence (1) 95:17 sentiment (2) 23:2,3 separate (1) 71:21 served (2) 61:23;62:6 service (1)	6:22 Services (8) 14:11;22:12,23; 89:15,20;90:6,8;95:18 set (3) 25:13;42:1;89:12 sets (1) 89:1 several (5) 6:18,18;32:18;41:2; 87:9 short (2) 30:19;85:20 shorten (2) 61:2;85:21 show (2) 46:4;86:21 showing (4) 60:20,21;61:6;72:9 shown (1) 57:15 shows (1) 66:5 sick (21) 43:23;44:3,14,18; 45:7;47:10;59:6;66:16; 77:22;78:19;79:21; 81:13;83:10,12;84:3; 93:3,9,21;94:3,15,21 sign (1) 90:24 signature (3) 88:6;90:13;96:23 signed (4) 29:6;32:16;34:7; 55:14 significant (1) 68:25 signing (1) 26:22 signs (6) 64:8;66:13;69:19; 70:22,24;72:9 simple (2) 20:25;47:3 simpler (1) 78:8 single (1) 69:25 site (2) 22:19;89:6 sitting (1) 9:8 situation (3) 21:19;37:11;70:8 Skramstad (2) 9:4,9 smoking (1) 64:23 Social (28) 15:21;16:16;17:18; 18:10;39:12,15,19,21; 41:22;42:18;43:3;	52:13;55:5,9,20;56:16, 21,25;57:9;76:11;77:6; 91:12,16;92:1,16;94:8, 12,13 Society (3) 49:9;60:10;61:4 solve (1) 22:16 somebody (2) 63:20;94:18 someone (3) 23:19;35:14;72:3 sorry (10) 21:8;52:20;54:24; 70:15;71:16;73:10; 78:6;80:2,19;93:16 so-so (1) 22:3 sound (3) 34:4;35:11;41:5 sounds (2) 24:8;31:12 source (1) 90:18 speak (4) 31:15,23;74:19;75:6 speaking (3) 11:1;33:3;41:22 speaks (1) 35:12 Special (1) 90:4 specialists (1) 22:1 specialized (1) 89:20 specific (1) 50:9 specifically (3) 8:11;42:16;87:4 specifics (2) 40:16;60:5 specifies (1) 12:23 spell (2) 6:6,7 spent (4) 7:21;8:13;9:4;10:13 spoke (3) 31:17;32:15;39:8 spoken (3) 32:11;55:23;75:13 square (3) 76:12;77:3,11 SSA (3) 41:21;42:25;57:16 staff (8) 8:14;13:17;14:11; 29:4;41:18;74:20,21, 22 stages (2) 70:11,12 standards (4)
--	---	--	--	--

12:22;48:18;49:9; 60:11 stands (1) 85:1 start (6) 10:20;26:14;28:22; 35:22;88:18;91:14 started (1) 22:9 starting (5) 36:14;70:15,16; 71:20;80:17 starts (3) 10:20,21;21:13 State (3) 6:23;14:21;19:2 stated (3) 22:24;58:9;83:18 statement (2) 11:6;38:1 statements (1) 75:12 States (5) 5:2;7:4,24;44:7;84:7 statute (27) 12:9,13;13:4,5; 23:12,24;24:2;25:10, 12,16,20,20,22,25; 26:9;42:2;51:6;54:13; 65:16,18;70:6,7;78:25; 79:4;80:12,13;92:22 statutes (1) 82:16 statutory (1) 46:25 still (12) 15:7,15,23;16:18; 17:20;18:12;29:3,18; 46:5;65:24;68:16; 83:21 straight (1) 9:13 Street (1) 5:6 strike (2) 20:10,19 stuff (2) 22:8,8 stunning (1) 8:23 sub (1) 12:4 subject (5) 48:8;82:25;86:17,22; 87:7 submission (1) 24:24 submit (5) 43:4;66:14;81:11; 91:16,20 submits (2) 45:5;85:2 submitted (17)	43:11;44:13,20; 55:19;59:7;65:24; 66:25;67:6;68:17;70:2; 71:1;72:11;77:25; 78:21;79:24;82:3;84:5 submitting (3) 27:24;68:9;94:1 subparagraph (6) 12:11,12,14,15;13:2; 53:15 subpoena (1) 5:1 subsequent (1) 70:12 suffered (1) 66:12 suffering (1) 44:10 sufficient (9) 8:20;20:1,8;23:23; 45:21;65:3,19;96:9,15 sufficiently (1) 23:24 summarize (1) 12:24 summer (1) 69:14 summer's (1) 46:3 Superfund (3) 8:21;22;19;89:6 support (2) 73:6;91:20 supported (1) 73:9 suppose (1) 67:21 supposed (1) 80:9 Sure (24) 6:9;9:7;10:1;14:2; 19:12,19;23:10,17,23; 30:15,18,20;34:8;36:6; 42:9;44:1,7;46:6; 47:15;48:8;56:14; 67:14;78:9;79:10 surrounding (1) 75:2 sworn (5) 5:25;42:24;59:17; 60:17;68:3 system (6) 7:25;56:6;84:22; 89:2,12;90:1 Systems (1) 77:7	35:19;36:21,21;52:3; 71:15,16,16;73:18,20; 86:5;87:18,18,20,20 talk (2) 42:16;66:22 talked (6) 34:22;66:3;69:11,14; 72:18,19 talking (11) 9:9;22:1;23:20; 36:10;40:11;78:2,3,4, 11,12;84:13 Tanis (2) 86:14;87:9 task (1) 42:13 technically (3) 20:7;79:2;96:8 telephone (2) 92:15,24 telling (1) 57:16 tells (1) 78:18 term (1) 79:2 terminated (1) 62:12 terms (37) 7:1;34:18;37:22; 38:5,10,23;39:11,18, 24;41:16,20,25;42:4; 11;52:2;53:18;55:3; 57:9;59:25;60:5,10; 66:18;74:2,7,23,25; 76:4,8,22;82:10;83:3; 84:11;91:4,9;92:5; 93:23;94:7 testified (6) 6:1;33:13;34:15; 47:5;60:12;62:17 testify (2) 20:13;35:4 testifying (1) 38:22 testimony (48) 5:21;15:7,15,23; 16:18;17:20,22;18:12; 21:9;24:9;27:18;29:3, 18;33:4;34:15;37:6,25; 38:23;42:24;43:9,18, 20;46:21;50:10,22; 51:13,23;52:1;58:17; 59:2,17,20,20;60:17; 63:11;65:21;67:20; 68:3;69:3;72:23;73:1, 5,13,16;75:3;83:15,23; 94:17 Texas (5) 74:11,12,13,14,18 theoretically (1) 28:8 thickening (13)	treats (1) 57:10 Trejo (1) 5:8 tremolite (1) 22:2 trial (2) 35:15;51:12 tried (1) 10:5 triggers (1) 89:9 true (7) 21:22;29:7,8;62:16; 71:8;84:16;88:12 trust (4) 61:13,15;91:22; 93:12 try (2) 7:25;86:21 trying (2) 36:16;84:19 turn (3) 11:16;48:22;87:17 turned (1) 64:14 two (7) 6:25;7:1;8:2;10:5, 13;56:22;63:15 types (1) 76:22
U			
Ultimately (1) 70:17 unaware (6) 62:1,3;68:11,18; 69:4;84:24 under (26) 14:4,14,18;15:2,11, 21:16;15:17;18:18;9: 23:16;27:6;45:23; 46:21;49:8,12,24; 52:13;53:7;54:13;61:3; 62:17;81:4;83:16,22; 96:1,4 understood (4) 42:13;64:13;70:13; 85:6 undisputed (2) 27:1;38:1 United (5) 5:2;7:4,23;44:7;84:7 Unless (2) 59:9;94:20 up (13) 23:19;24:17;25:13; 40:23,24;61:2;66:5; 85:12,21;89:1,12;90:1, 24 upheld (1) 42:10			

upon (2) 30:2;49:18	Where's (1) 21:5		75:23	2015 (1)
use (1) 22:21	WHEREUPON (9) 5:20;30:24;46:9; 58:23;59:13;67:24; 75:25;85:25;96:20	X	12:02 (1) 76:2	70:16
used (5) 45:16,17;79:3;81:19; 89:12	Whitehouse (5) 74:8,9,12,16;75:4	x-ray (9) 12:18;19:5;20:1; 60:19;61:6;63:22; 69:19;77:18;79:17	12:14 (1) 85:23	2016 (1)
	Whitman's (1) 57:24	x-rays (9) 17:16;18:8,24;19:17; 52:11;69:23;72:1,5; 76:25	12:28 (1) 86:2	70:16
V	whole (2) 11:22;24:6		12:42 (2) 96:18,21	2017 (1)
vaguely (1) 66:22	who's (7) 63:20;64:3,4;78:15, 17:79;17,18		13 (1) 29:12	70:17
valid (1) 60:18	wicked (1) 22:8		137 (1) 26:12	2022 (12)
variations (1) 19:18	wit (1) 5:21		14 (1) 49:22	13:14;28:14,17; 31:11;33:1,6;35:25;
varied (1) 19:17	within (3) 42:6;76:10;79:14		15-minute (3) 32:7;33:13,15	36:24;46:20;51:10;
various (4) 11:20,21,21;20:4	without (8) 26:24;58:12;62:15; 80:24;81:1;85:9;93:20; 94:18		160 (4) 86:4,8,12;87:6	58:16;69:12
vermiculite (1) 8:25	witness (32) 5:6,25;19:12;20:21; 23:10;24:6;25:20; 27:17;28:4;30:12,15, 18,20;35:2,15;37:8,13, 17:40;13:51:1,2,24; 62:3;65:16;69:4;71:4; 73:21;75:21;80:9;		161 (5) 87:24;88:1;90:18; 95:7,11	2023 (1)
versus (1) 5:4	witnesses (2) 34:23;35:10		17 (2) 7:6;52:3	5:5
VIDEO (14) 5:1,8,17;30:21;31:1; 46:12,17,19;67:18; 75:22;76:1;85:22;86:1; 96:17	word (4) 15:3;24:2;58:14; 81:19		1881 (1) 58:10	21 (2)
video-recorded (1) 5:1	words (2) 45:16,17		1881A (6) 12:1,2;14:18;53:5; 95:24;96:1	28:22;29:16
virtually (1) 22:4	work (4) 6:20;74:17;77:12; 84:19		1-888-482-3128 (1) 90:23	22 (3)
visited (3) 8:13;35:9;41:3	worked (4) 14:9;22:14;40:1; 74:16		19 (1) 36:21	51:22;80:17,20
	working (3) 7:22;13:17;90:1		19-40-M-DLC (1) 5:3	224 (1)
W	worsened (1) 22:13		1978 (1) 7:3	5:6
waived (1) 96:23	WR (1) 89:22		19th (3) 35:25;36:24;46:20	24 (3)
watch (1) 9:18	writing (4) 33:9;38:11;88:21,22			36:15;37:3;86:5
watching (1) 9:16	written (8) 13:5;33:7,18,23; 34:2,9,11;84:14			25 (2)
way (17) 13:6;23:12;43:19,22; 49:12;55:3;58:15; 67:18;70:24;76:8;78:7; 79:9;82:7;85:2,12; 91:11;93:13	wrote (4) 89:13;95:17,21; 96:10			87:18,20
ways (1) 20:4	wwwbaucusenategov (1) 88:9			25th (1)
website (1) 88:8				5:5
weeks (1) 56:22				292 (1)
weren't (1) 35:6				26:21
Western (1) 6:24				
what's (5) 48:3;49:7;52:3;60:7; 64:18				
				3
				3 (4)
				10:16;21:8;26:15;
				73:20
				30 (1)
				22:18
				301 (1)
				16:21
				305 (1)
				11:14
				332-6106 (1)
				90:12
				348 (2)
				28:6,11
				35 (2)
				36:19,19
				36 (6)
				35:20;36:9,13,14;
				37:1,2
				4
				4 (3)
				14:7;24:21;26:12
				40 (1)
				8:5
				406 (1)
				90:12
				5
				5 (1)
				24:20
				58 (4)

79:10,11;80:17,20 59 (3) 48:22;49:20,22				
6				
6 (5) 10:21;14:21;16:21; 58:21,23 62 (2) 71:14,17				
7				
7 (5) 11:13;15:9,10;71:18, 20 70s (1) 6:24 74 (1) 7:1 756-1150 (1) 90:12 76 (1) 24:20 78 (2) 7:1,3				
8				
8 (7) 15:17,18;28:6;59:11, 13;79:10,12 800 (2) 11:23;90:12 81A (1) 12:3				
9				
9 (8) 10:16;16:3;21:9,15; 28:19,20,21,21 97 (1) 26:21				